

DISCIPLINARY COMMITTEE (PRACTICE AND PROCEDURES) RULES, 2023

APPROVED BY THE NATIONAL EXECUTIVE COMMITTEE ON2024

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DISCIPLINARY COMMITTEE (PRACTICE AND PROCEDURE) RULES, 2023

IN EXERCISE of powers conferred by the WIPER Democratic Movement Party Constitution, the Disciplinary Committee, with the approval of the National Executive Committee, formulates the Disciplinary Committee (Practice and Procedures) Rules, 2023. These rules are established to maintain the integrity, discipline, and ethical standards within Wiper Democratic Movement Party. The Disciplinary Committee serves as a crucial component to uphold the principles and values of the party. These rules outline the structure, responsibilities, and procedures governing the Disciplinary Committee and all WIPER Democratic Movement Party Members

PART I – PRELIMINARY

1. Short Title

These Rules may be cited as the Disciplinary Committee (Practice and Procedure) Rules, 2023 (hereinafter “**the Rules**”).

2. Date of Commencement

These Rules shall come into effect on the date of approval by the National Executive Council.

3. Definitions of Terms / Interpretation

In these Rules unless the context otherwise requires:–

“**Chairperson**” means the person in charge of meetings and all undertakings of the Disciplinary Committee, coordination of investigations, and ensuring fair and impartial proceedings.

“**Complaint**” means a statement on a malpractice or something deemed unsatisfactory or unacceptable that is lodged in accordance with these Rules;

“**Complainant**” means the party and or a person who lodges a complaint under these Rules;

“**Constitution**” means the WDM Constitution consisting of the fundamental principles that govern the Party;

“**Disciplinary Committee**” or “**Committee**” means a group of people charged with the work of examining alleged breaches of discipline within the Party, and that is established pursuant to the provisions of the WDM Constitution and shall investigate and adjudicate matters related to violations of the party Constitution, code of conduct, and any other policies governing the conduct of party members.

“**Jurisdiction**” means having the power and authority over matters related to the conduct of party members, including but not limited to violations of the party constitution, code of conduct, and ethical standards.

“**Hearing**” means a seating of the Committee duly constituted for the purposes of conducting proceedings under these Rules;

“**Member**” means a constituent individual who is part of the Committee;

“National Chairperson” is the National Leader of the Party holding office pursuant to the relevant provisions of the Constitution and/or a Deputy National Chairperson performing the functions of that office in accordance with relevant provisions of the Constitution;

“National Executive Council” or **“NEC”** is the Leadership body at the helm of the Party established pursuant to the relevant provisions of the Constitution;

“Notice to Show Cause” means the letter issued to a party to show cause why disciplinary action should not be taken against that party under these Rules;

“Party” or **“WDM”** means and/or refers to the Wiper Democratic Movement;

“Party Organ” means a meeting, Committee or any other structure of the party established by the Party Constitution.

“Party member” any individual who is a registered member of WDM Party by way of having paid membership and or subscription fees where applicable

“Official” means any person who is elected by members of the Party to hold office or leadership position in the party

“Respondent” refers to a person against whom a complaint has been lodged;

“Rules” mean a set of explicit or understood regulations or principles governing conduct or procedure within the disciplinary Committee;

“Secretary” means the Person or Official appointed by the Committee to conduct its correspondence and keep its records and who is appointed under these Rules;

“Secretariat” or **“National Secretariat”** means the Office or People responsible for management of the Party's disciplinary issues and is established pursuant to the relevant provisions of the Constitution; and

“Summons” means an Order to appear before the Disciplinary Committee as issued under these Rules.

4. Object and Guiding Principles of the Rules

(1) The object of these Rules is to provide the procedure for just, lawful, efficient, expeditious, proportionate, procedurally fair and affordable resolution of complaints by the Committee.

(2) In the exercise of its powers and authority, and in the due discharge of its functions under these Rules, the Committee shall be guided by the following principles:-

- (a) Justice shall be administered to all irrespective of status.
- (b) Justice shall be administered without undue regard to procedural technicalities.
- (c) Efficient use of available Party and administrative resources.
- (d) Timely and affordable disposal of complaints.
- (e) The use of appropriate technology.

(3) The Committee shall be guided by the rules of fair administrative action and natural justice in its processes and procedures, and in particular, that:

- (a) any party to the proceedings before the Committee shall have reasonable notice of the proceedings;
- (b) any person whose rights are likely to be affected shall be given reasonable opportunity to present their case before the Committee; and
- (c) there shall be a presumption of innocence of any party who is subject to the proceedings before the Committee.

PART II – COMPLAINTS

5. Complaint

- (1) All proceedings before the Committee shall be initiated by way of a complaint.
- (2) A complaint may be made against a member, an official of the Party or an elected or nominated member of the Party.
- (3) A complaint may be oral or written.
- (4) Where the complaint is oral, the Secretariat shall put it into writing.

6. Complainant

- (1) A member of the Party may lodge a complaint.
- (2) An official of the Party may lodge a complaint.
- (3) Any organ of the Party may lodge a complaint.

7. Registering a Complaint

- (1) A complaint shall be addressed to the National Chairperson. Provided that a complaint shall not be invalidated for the reason that it is addressed to any other Party official and/or organ.
- (2) The Secretariat shall register all complaints in the complaints register.

8. Role of National Chairperson

- (1) In all cases which do not appear to the National Chairperson to be of serious or aggravated nature, he or she shall endeavour to promote reconciliation and encourage and facilitate an amicable settlement between the parties to the complaint.

9. Processing of Complaint

The Secretariat, shall upon receipt of a complaint, register it in the complaints register and immediately submit it to the National Chairperson or in his or her absence a Deputy National Chairperson to proceed as set out in these Rules.

10. Notice to Show Cause

(1) The National Chairperson shall review the received complaint, and where it appears to him or her that it discloses a disciplinary offence, shall forward the said complaint to the Disciplinary Committee, who shall issue a show cause letter to the person or persons against whom the complaint has been lodged to answer the complaint in a reasonable period.

(2) The show cause letter shall state the alleged violation, offence or such other matter that the member is accused of.

(3) The member against whom a complaint has been lodged shall respond to the show cause letter in writing within the period set out in the letter.

11. Decision to Charge or not to Charge

(1) At the expiry of the period within which a response is to be made, the Disciplinary Committee may proceed as follows:-

(a) Where there is no response to the show cause letter, the Disciplinary Committee shall further review the complaint and either direct the Secretariat to close the matter or issue summons to the Respondent to appear before the Disciplinary Committee for a hearing of the complaint.

(b) Where there is a response, review the response and if satisfied that the issues in the complaint have been adequately addressed in the response issue direction to the National Secretariat to close the matter and advice the complainant accordingly.

(c) Where the Disciplinary Committee is of the considered view that the person against whom a complaint has been lodged has a case to answer, the Disciplinary Committee shall issue summons to the respondent to appear before it for a hearing of the complaint.

(d) Where the Disciplinary Committee may require further information and/or clarification, it may seek the further information and/or clarification from any of the parties, the Secretariat and/or any other organ of the Party

(2) A party may withdraw a complaint at any time before a decision to charge has been made by the Disciplinary Committee.

PART III – THE DISCIPLINARY COMMITTEE

12. The Committee

- (1) These Rules are made pursuant to the relevant provisions of the Party Constitution that established the Disciplinary Committee.
- (2) The Committee is composed of a Chairperson and at least four members appointed by the National Executive Council .
- (3) The Chairperson shall be an Advocate of the High court of Kenya of not less than ten years' standing.
- (4) The Chairperson and members shall serve on a part-time basis.
- (5) The Chairperson and members shall hold office for a period of five years and shall be eligible for re-appointment for one last term of five years.
- (6) The quorum of the Committee is the Chairperson and at least two members. Where the Chairperson is not present a member shall perform the functions of that office subject to meeting the requirement in sub-rule 3 above.
- (7) The remuneration of the Chairperson and members of the Committee shall be as spelt in their respective instruments of appointment.

13. Powers and Duties of the Committee

- (1) The Committee shall hear and determine any complaint before it expeditiously and without undue delay.
- (2) The proceedings of the Committee shall be governed by the Party Constitution and these rules and/or such applicable law.
- (3) The Chairperson shall coordinate the work of the Committee as may be necessary for the due execution of its functions under these Rules.
- (4) Notwithstanding anything contained in these Rules, the Committee shall have power to make such orders and/or issue such directions as may be necessary to facilitate the just, expeditious and fair determination of complaints before it.

14. Role of The Secretary

- (1) The Secretary shall be the registrar of the Committee.
- (2) The Disciplinary Committee shall designate one of its officers as the Secretary.
- (3) In relation to proceedings before the Committee, the Secretary shall be responsible to the Committee for:-
 - (a) keep records of the proceedings and minutes of the meetings of the Committee and such other records as the Committee may direct;
 - (b) certifying that an order, direction or decision is an order, direction or decision of the Committee, the Chairperson or a member of the Committee, as the case may be;
 - (c) acceptance, transmission, service and custody of documents in accordance with these Rules;

- (d) communication of the costs (if any) awarded by the Committee; and
 - (e) undertaking any duties assigned by the Committee.
- (4) The Secretary may with the approval of the Committee consider and dispose of procedural and/or administrative matters in accordance with these Rules.
- (5) All documents to be served upon the Committee shall be served upon the Secretary through the Party Secretariat.

15. Register

The Secretary shall prepare a register of complaints filed at the Secretariat containing the following particulars:-

- (a) names of the parties;
- (b) nature of the complaint;
- (c) date of complaint;
- (d) relief sought; and
- (e) final determination or order and the date thereon.

16. Jurisdiction of the Committee

The Committee shall have the jurisdiction to hear and determine such matters as provided for under the Constitution and/or as may be conferred upon it by any written law.

PART IV – SUMMONS AND SERVICE OF DOCUMENTS

17. Summons

- (1) Where a complaint is referred to the Committee for hearing, determination and/or further action, the Committee shall process the complaint in accordance with these Rules.
- (2) The Committee shall summon the complainant and the person complained against (hereinafter called “the Respondent”) for a hearing.
- (3) The summons shall be accompanied by the following:-
 - (a) all the documents, materials, evidence and information that the Disciplinary Committee shall rely upon in making a decision

- (b) notification as to time and date that the parties of the hearing; and
- (c) notification whether the hearing will take place physically and the venue thereof or where the hearing shall take place virtually the necessary information to enable the parties to participate.
- (4) In the issuance of summons, the Committee shall ensure that all parties are afforded reasonable opportunity to adequately prepare to appear before the Committee.
- (5) Where appropriate, the Committee may inform the parties to file such further documents, witness statements, information, legal arguments, submissions and such related matters within a specified period of time.

18. Service of Documents

- (1) All service of documents pursuant to these Rules shall be effected by the Secretary.
- (2) A document required to be sent to or served on any person under these Rules may be:-
 - (a) delivered at the person's physical address personally or by courier service; and
 - (b) sent to the person by other electronic means including email, WhatsApp and any other social media platforms; or
 - (c) through such other means as may be authorized by the Committee.

PART V — HEARING

19. Scheduling

- (1) The time, place and mode of hearing, whether physical or virtual, shall be determined by the Chairperson in consultation with the Committee Members and duly communicated to the parties.
- (2) The Secretary shall give the parties adequate notice of a hearing.

20. Procedure at hearing

- (1) For the purposes of these Rules, during the hearing, the complaint shall be treated as the Complainant's pleadings while the Respondent's response shall be treated as the Respondent's pleadings.
- (2) At the beginning of the hearing, the Chairperson shall explain the order of proceedings which the Committee shall apply. The Committee shall conduct its hearings in such manner as

it considers most suited to the fair determination of the issues before it and generally to the just handling of the proceedings.

(3) The parties shall be heard in the order determined by the Committee, and shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Committee on the evidence and the subject matter of the complaint.

(4) Evidence before the Committee may be given orally or by an affidavit, as shall be directed by the Committee.

(5) The Committee may at any stage of the proceedings require the personal attendance of any witness and/or deponent.

(6) The Committee may make orders to secure the attendance of any person before the Committee, discovery or production of any document concerning a matter before the Committee as it deems necessary.

(7) The Committee shall require any witness giving evidence to swear an oath or affirm and for that purpose it may administer an oath or affirmation.

(8) Unless the Committee otherwise directs, no witness shall be heard unless the relevant affidavit has been submitted in advance of the hearing and/or in accordance with any directions of the Committee.

21. Representation of Parties

(1) In all proceedings under these Rules any party and/or interested party may be represented by an Advocate of his or her choice.

(2) Where a party is not represented by an Advocate, the party shall be entitled to be accompanied by not more than one friend who is a member of the Party during proceedings under these Rules.

22. Participation of the Party

(1) The Party, through the National Secretariat, shall be entitled to participate in any proceedings before the Committee. Provided that where the Party is of the considered view that its participation in proceedings may embarrass, prejudice or otherwise compromise the just determination of a complaint, excuse itself from the proceedings.

(2) Where the Party participates in proceedings under these Rules, the Party may be represented by an Advocate and/or such other person as may present the Party's case to the Committee.

(3) It is further provided that the Party shall be entitled to file documents, present witnesses and/or furnish such information as may be necessary for a just determination of a complaint before the Committee.

23. Conduct of Hearing

(1) Without prejudice to the generality of rule 20 above, the Complainant shall urge his or her case first, followed by the Respondent, and with leave of the Committee the complainant may have a right of reply.

(2) Subject to rule 22 where the Party elects to participate in proceedings, it shall lie on the Committee to determine the order in which the parties proceed before it.

24. Inherent Powers of the Committee

(1) The Committee may dismiss all or any part of a complaint without holding a hearing if it decides that any of the following apply:-

(a) that the complaint is outside the jurisdiction of the Committee; or

(b) that the complaint was not filed within the time stipulated in the Rules or Order of Committee; or

(c) the complaint is frivolous, scandalous, vexatious, trivial or an abuse of the due process of the Committee; or

(d) the complaint was made in bad faith or for an improper purpose; or

(e) the complaint does not disclose a reasonable cause of action.

(2) Where a complaint is dismissed under this rule, the Committee shall notify the parties in writing giving reasons for the decision.

(3) The Committee shall have the power to call for the record comprising any document in respect of which a complaint has been made.

(4) In exercise of its power under this rule the Committee may act either on its own motion or on an application.

25. Consequences of non-appearance

If a party or their recognized representatives do not appear before the Committee at the appointed time without reasonable cause, the Committee may proceed to determine the complaint the party's absence notwithstanding.

PART VI:- DECISIONS OF THE COMMITTEE

26. Provisions on Decisions

(1) After conducting the disciplinary hearing, the Committee shall retire to write its decision. The Disciplinary Committee shall give reasons for decision made.

(2) A decision of the Committee shall be valid when signed by the Chairperson and at least one other member.

- (3) The decision shall be in the form of a recommendation to the National Executive Council.
- (4) The Committee may make any of the following recommendations:
 - (a) Reprimand, censure and/or sanction.
 - (b) Fine.
 - (c) Suspension from the Party for a definite period.
 - (d) Expulsion from the Party.
- (5) The recommendation of the Committee shall be communicated in writing to the National Executive Council within a period of not more than 7 days from the date of the decision being rendered by the Committee.
- (6) A decision by the Committee for reprimand, censure, sanction or a fine shall take effect upon a resolution of the National Executive Council.
- (7) A decision by the Committee recommending suspension or expulsion shall be placed before the National Executive Council whose decision shall be final.

PART VII:- APPEALS PROCESS

- (1) Right to Appeal: Any party member subjected to disciplinary action may appeal the decision if the Disciplinary Committee to the National Executive Council within Seven (7) days of date of the said decision.

PART VII - MISCELLANEOUS

27. Branch Disciplinary Committee

- (1) The National Executive Council may appoint an ad hoc Committee to investigate and hear disciplinary matters in any county, branch, sub branch or polling station committees
- (2) These Rules shall apply mutatis mutandis to county, branch, sub branch or polling station disciplinary committees pursuant to the provisions of the Party Constitution.
- (3) The Disciplinary Committee shall have a supervisory jurisdiction over the county, branch, sub branch or polling station disciplinary committees.

28. Computation of time

- (1) Where a period expressed in hours or days is to be calculated from the moment at which an event occurs or an action takes place, the hour or day during which that event occurs or that action takes place must be counted as falling within the period in question.
- (2) Notwithstanding any other provisions of the law, the proceedings under these Rules shall be conducted at any time or day of the week.

(3) The Committee may, on application, for good reason shown, extend the time appointed by these Rules for doing any act or taking any proceedings, and may do so upon such terms and conditions, if any, as appear to it just and expedient.

29. Protection from personal liability

(1) No criminal or civil proceedings may be instituted in any court or tribunal against the Chairperson or any member of the Disciplinary Committee by reason of anything done or any decision made in the performance of their functions and or duties.

(2) Nothing in these Rules must limit or otherwise affect the inherent power of the Committee to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Committee.

30. Confidentiality

All proceedings and information related to disciplinary matters shall be treated with utmost confidentiality to protect the rights and reputations of the involved parties.

31. Oath of Office

A person, who is appointed Chairperson, Member or Secretary of the Committee, shall take and subscribe to the oath of allegiance to the office, before assuming the duties of that office.

32. Disclosure of interest

Where a member of the Committee, has any interest, that could conflict with the proper performance of the member's functions, the member must disclose the interest to the parties to the proceedings and must not participate during any deliberations on the matter by the Committee.

33. Non-Disclosure

Committee members shall be bound by a confidentiality agreement and shall not disclose information about ongoing investigations or deliberations.

34. Official Seal or Stamp

The Committee shall have an official seal or stamp to be kept under the custody of the Secretary.

35. Amendments

These Rules may be amended from time to time by the Committee with approval of the National Executive Council.

36. Transition

(1) These Rules repeal and supersede any other rules that governed the Party's disciplinary processes prior to these Rules coming into force.

(2) Any disciplinary proceedings initiated under the repealed rules but have not been finalised at the time these Rules come into effect shall be concluded under those repealed rules.

(3) The Disciplinary Committee existing prior to these Rules coming into effect shall continue being in office as the Disciplinary Committee for the remainder of their unexpired term and/or upon a resolution of the National Executive Council.

37. Fees

(1) The Committee may from time to time provide for fees payable in respect of services rendered pursuant to these Rules.

(2) Even where fees are provided for, the Committee may, if it considers it to be in the interest of justice, and for reasons to be recorded, waive or postpone all or any of the fees payable pursuant to these Rules.