

**THE ORANGE DEMOCRATIC MOVEMENT
PARTY
DISCIPLINARY COMMITTEE**



**DISCIPLINARY COMMITTEE
(PRACTICE AND PROCEDURE)
RULES, 2022**

**APPROVED BY THE NATIONAL EXECUTIVE
COMMITTEE ON 24TH FEBRUARY 2022**

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DISCIPLINARY COMMITTEE (PRACTICE AND PROCEDURE) RULES, 2022

IN EXERCISE of powers conferred by the Orange Democratic Movement Party Constitution, the Disciplinary Committee, with the approval of the National Executive Committee, makes the Disciplinary Committee (Practice and Procedure) Rules, 2022:

PART I – P RELIMINARY

1. Short Title

These Rules may be cited as the Disciplinary Committee (Practice and Procedure) Rules, 2022 (hereinafter “**the Rules**”).

2. Date of Commencement

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

3. Interpretation

In these Rules unless the context otherwise requires –

“**Chairperson**” means the Chairperson of the Disciplinary Committee;

“**Complaint**” means a complaint lodged in accordance with these Rules;

“**Complainant**” means a person who lodges a complaint under these Rules;

“**Constitution**” means the ODM Party Constitution;

“**Disciplinary Committee**” or “**Committee**” means the Disciplinary Committee established pursuant to the provisions of the Constitution;

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

“**Member**” means a member of the Committee;

“**National Chairperson**” is the National Chairperson 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 Committee**” is the National Executive Committee of the Party established pursuant to the relevant provisions of the Constitution;

“**National Governing Council**” is the National Governing Council 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 **“ODM”** mean and/or refer to the Orange Democratic Movement Party;

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

“Rules” mean these Rules;

“Secretary” means the Secretary of the Committee appointed under these Rules;

“Secretariat” or **“National Secretariat”** mean the National Secretariat of the Party established pursuant to the relevant provisions of the Constitution; and

“Summons” means summons 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 rules of fair administrative action and natural justice in its processes and procedures, and in particular, that:
 - (a) any party to 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 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 member of the Party.
- (3) A complaint may be oral or written.
- (4) Where the complaint is oral, the Secretariat shall reduce 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 y. 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 Secretary shall register all complaints in the register.

8. Role of National Chairperson

- (1) The National Chairperson shall oversee the disciplinary process in the Party as provided in the Constitution and these Rules.
- (2) 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 Secretary, shall upon receipt of a complaint, register it 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 issue a show cause letter to the person against whom a complaint has been lodged to answer the complaint within 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.
- (4) In the exercise of the functions under this rule, the National Chairperson may constitute a team to act in advisory capacity, to conduct investigation, enquiry or review into such matters as he or she may deem relevant to the complaint.
- (5) The team constituted under this rule may be appointed from among members of the Party's Legal Committee, National Elections Board, National Secretariat or such other relevant Party organ, as may be necessary to assist the National Chairperson perform the functions under this rule.

11. Decision to Charge or not to Charge

- (1) At the expiry of the period within which a response is to be made, the National Chairperson may proceed as follows:
 - (a) Where there is no response to the show cause letter, the National Chairperson shall either refer the matter to the Committee for further review and/or action or direct the Secretariat to close the matter.
 - (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 National Chairperson may require further information and/or clarification, he or she may seek the further information and/or clarification from any of the parties, the Secretariat and/or any other organ of the Party.
 - (d) Where the Chairperson is of the considered view that the person against whom a complaint has been lodged has a case to answer, refer the matter to the Disciplinary Committee.
- (2) Where the National Chairperson makes a decision to refer a complaint to the Committee under sub rule (1)(d) above, he or she shall forward the following documents to the Committee:

- (a) The Decision to Charge.
 - (b) The complaint.
 - (c) The notice to show cause letter.
 - (d) The response to the notice to show cause.
 - (e) Any document that the National Chairperson is of the considered view may assist the Committee to determine the complaint.
- (3) The Decision to Charge may take any such form as the National Chairperson deems fit.
- (4) A party may withdraw a complaint at any time before a Decision to Charge has been made by the National Chairperson.

PART III – THE DISCIPLINARY COMMITTEE

12. The Committee

- (1) These Rules are made pursuant to the provisions of the relevant provisions of the Constitution as establish the Disciplinary Committee.
- (2) The Committee is composed of a Chairperson and at least four members appointed by the National Executive Committee.
- (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 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 spelled out 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 Constitution and rules made thereunder, 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 Secretary

- (1) The Secretary shall be the registrar of the Committee.
- (2) The National Secretariat 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) establishment and maintenance of a registry;
 - (b) acceptance, transmission, service and custody of documents in accordance with these Rules;
 - (c) 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;
 - (d) keep records of the proceedings and minutes of the meetings of the Committee and such other records as the Committee may direct;
 - (e) assessment of the costs awarded by the Committee; and
 - (f) 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.

15. Register

The Secretary shall prepare a register of complaints filed at the registry 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 “the Respondent”) for a hearing.
- (3) The summons shall be accompanied by the following:
 - (a) the documents referred to in rule 11(2);
 - (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;

- (b) sent to the person by other electronic means including email, WhatsApp and 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 Secretary and duly communicated to the parties.
- (2) The Secretary shall give the parties adequate notice of a hearing.
- (3) All proceedings before the Committee in respect of a specific complaint shall be heard and determined not later than thirty days of Committee receiving the Decision to Charge from the National Chairperson.

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 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 National Executive Committee.
- (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 Committee within a period of not more than 3 days 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 Committee.
- (7) A decision by the Committee recommending suspension or expulsion shall be placed before the National Executive Committee, and if approved shall be referred to the National Governing Council whose decision shall be final.

PART VII - MISCELLANEOUS

27. Branch Disciplinary Committees

- (1) The branch disciplinary committees shall have such jurisdiction as may be determined by National Executive Committee.
- (2) These Rules shall apply *mutatis mutandis* to branch and regional disciplinary committees pursuant to the provisions of the Constitution.
- (3) The Disciplinary Committee shall have a supervisory jurisdiction over the branch and regional 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) The Chairperson, Members or Secretary of the Committee, are not liable for anything done in good faith in the performance of their functions.
- (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. 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, in the format prescribed in the Constitution, before assuming the duties of that office.

31. 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.

32. Official Seal or Stamp

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

33. Amendments

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

34. 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 Committee.

35. 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.

