



TOOLKIT FOR BUILDING PROCEDURES TO HANDLE COMPLAINTS ABOUT JUDICIAL CONDUCT - ADDITIONAL DOCUMENTATION

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

Toolkits are evolving and changes may be made in future versions. For the latest version of this Additional Documentation please refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstance.

Complaints Handling Procedures Manual

This manual sets out what is to be done at each step in progressing a complaint. Its aim is to ensure that the record is maintained and that the complaint is progressed within time limits and without delay.

Two records are to be kept, a paper file system and a computer log. Cases received in any calendar year will be allocated a sequential number preceded by the year of receipt.

The file – the primary record

A paper file will be created for each complaint received. This will be the principal record comprising the original complaint together with copies of all correspondence. The files are confidential and are to be kept in the office of the Chief Justice (CJ). Access is limited to the CJ and any person specifically authorised by the CJ.

A cover sheet has been designed for the paper file on which to record the essential details and the dates set for the file to be considered by the CJ (or his delegate).

The log – this provides a backup and captures information for monitoring and reporting

The computer log will record the complaint and its progress thus providing a backup reference to the paper file system.

The log will also record generalised information regarding the nature of the complaint, the outcome and final disposal for the purposes of monitoring the operation of the complaints handling procedures and creating an annual report.

Pro forma notices

A series of *pro forma* notices have been prepared to support the handling of cases. The language has been kept simple. At every stage the complainant should be helped to understand what is happening, why and what will happen next.

What you will find in this Manual

Section 1 - Complaints handling

Each pair of facing pages in this manual is set out as follows:

<p>Notes: Explanatory notes are included where appropriate.</p>
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<p>Trigger event The event which should trigger activity</p>	
<p>What must be done</p>	
<p>Time limits</p>	
<p>Log What must be recorded on the log</p>	<p>File What must be recorded on the file</p>

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NOTE: the draft notices printed in blue above have not been reproduced here.

Section3 The Procedures

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Section 1

The administrative procedures for handling complaints

NOTES

The notice of acknowledgement must give:

1. The Complaint Number
2. The date by which the claimant will receive notice of the outcome of the PE
3. Explain what will happen next

For the purposes of analysis and reporting the computer log records the nature of all complaints received, whether or not they fall within the rules, under the following generalised categories:

- Conflict of interest,
- Conviction,
- Criminal behaviour,
- Delay,
- Discrimination,
- Inappropriate behaviour/comment in execution of judicial function,
- Inappropriate behaviour in private life
- Judicial decision case management,
- Misuse of judicial status,
- Not specified (i.e. the behaviour is not particularised)
- Not fulfilling judicial duty (other than delay),
- The subject is not a judicial officer,
- Miscellaneous

The form for acknowledgement is form A1C – page

Complaint received	
What must be done <ol style="list-style-type: none"> 1. Create log entry 2. Make up file 3. Set and diarise date for Preliminary Examination 4. Send Notice of Acknowledgement to the Complainant 	
Time limits <p>The Complainant must be informed of the outcome of the Preliminary Examination within 28 days of the receipt of the complaint. The date set for the PE should ideally be within 14 days of receipt to allow ample time for the notice to be received. It must be set in the CJ's diary so that time is allocated in which the complaint will be considered.</p>	
Log <ol style="list-style-type: none"> 1. Complaint Number 2. Name and address of complainant 3. Name and office of subject 4. Date of alleged misconduct 5. If related to legal action: case number 6. Deadline for informing complainant as to outcome of PE 7. Date for PE – set and diarised 8. Date Notice of Acknowledgment sent 9. Categorise subject matter of complaint (see note) 	File <ol style="list-style-type: none"> 1. Complaint Number 2. Name and address of complainant 3. Name and office of subject 4. Date of alleged misconduct 5. If related to legal action: case number 6. Deadline for informing complainant as to outcome of PE 7. Date for PE – set and diarised 8. Copy of Notice of Acknowledgment 9. Confirm notice sent

NOTES

If at any time it appears to the Chief Justice that a complaint raises matters which should be considered by a disciplinary tribunal the matter should immediately be referred to the Judicial Services Commission

Forms

Referral to Judicial Services Commission
RJSC – C and J

Summary Rejection under paragraph 6 of The Procedures

SRC6a - Out of time para 6.a

SRC6b - Incomplete para 6b

SRC6c - Not a judicial officer Para 6c

SRC6d - Not 'behaviour' within the procedures para 6d

SRC6e - Allegation of criminal activity (untried) para 6e

SRC6f - Could found appeal or review. para 6f

SRC6g - Frivolous or vexatious para 6g

Referral for Conduct Enquiry

RCE C - Notice to complainant

RCE J - Notice to Judge

Paragraph 6 of The Procedures states:

A complaint will be summarily rejected if

- a. it is incomplete, or
- b. it is received more than six months after the incident alleged to constitute misconduct, or
- c. the subject is not a judicial officer, or
- d. it is not a complaint about judicial conduct within the meaning of these rules, or
- e. the complaint alleges criminal behaviour, or
- f. the alleged conduct constitutes grounds for an appeal or review, or
- g. it is frivolous or vexatious

Trigger event			
Preliminary Examination (Diarised date arrives)			
What must be done			
1. Decide whether or not this is a complaint that can proceed to Conduct Enquiry At this point the complaint is checked for compliance with: <ul style="list-style-type: none"> • time limit • information required by the procedures • rules regarding what kind of conduct can found a complaint. <p style="margin-left: 40px;">If NO - Summary Rejection If YES - Referred for Conduct Enquiry (Consider direct reference to JSC)</p>			
2. Send Notice to Complainant of outcome (either rejection or referral to CE)			
3. If referred to CE: <ol style="list-style-type: none"> a. Notice to judge who is subject of complaint b. Set deadline for subject's response c. Diarise date for Conduct Enquiry Management (CEM) reconsideration of file 			
Time Limits: <ul style="list-style-type: none"> • Complaints must be received within 6 months of the alleged misconduct • Notice to complainant of outcome of PE within 28 days of receipt of complaint. • If referred for Conduct Enquiry time limit of 28 days for subject's response starts to run • The Complainant should receive notice as to what happens next within 14 days of the deadline for subject's response. <p>The deadline for the final determination is 56 days from deadline for response.</p>			
Either: Summary Rejection			
Log	File		
1. Rejection	1. Rejection	3. Copy of Notice of rejection	
2. Reason for rejection under para 6	2. Reason for rejection under para 6	4. Confirm notice served.	
3. Date of final disposal	3. Date of final disposal	5. Date of final disposal	
		6. Archive file	
Or: Referred for Conduct enquiry			
Log	File		
1. Record decision	1. Record decision		
2. Record deadline for response	2. Record deadline for subject's response		
3. Record date set for Conduct Enquiry Management (CEM) decision (shortly after deadline for response).	3. Set and record date for Conduct Enquiry Management (CEM) decision (shortly after deadline for response).		
4. Record deadline for final determination	4. Record deadline for final determination		
	5. Copy of notice to complainant		
	6. Copy of notice to subject		
	7. File note confirming service		

NOTES

If it appears to the Chief Justice having considered the complaint and any response from the subject that matters are raised which should be considered by a disciplinary tribunal the matter should be referred to the Judicial Services Commission

Forms

Referral to Judicial Services Commission - RJSCC and RJCJ

No dispute as to facts - Final determination - D1C and D1J

Where there is no dispute as to fact and the CJ is able to make a final determination.

The notice to the complainant and subject must explain the decision including any action to be taken by reference to paragraph 11 of The Procedures. Which provides:

Paragraph 11

Where the subject of the complaint admits behaviour which in the opinion of the Chief Justice constitutes a minor misconduct insufficient to warrant disciplinary action, the Chief Justice will determine the appropriate disposal. He may:

- a. Determine that there was no misconduct, or
- b. Take no further action on the basis that the misconduct was very minor or trivial, or
- c. Give pastoral advice, and, or
- d. Recommend further training, or
- e. Issue a warning.
- f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

The Complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

Outstanding issues – facts disputed - DFSCJ

Paragraph 12 of the procedures provides that:

Where the subject of the complaint contests matters alleged in the complaint, the Chief Justice may take whatever steps he deems appropriate to determine whether any misconduct took place always provided that such steps shall be appropriate, fair and proportionate to the seriousness of what is alleged.

The notice to the complainant and subject must:

1. identify the issue or issues which need to be resolved before a decision can be made
2. explain the procedure according to which the CJ shall determine those issue/s
3. Set a date for consideration of further submissions or for an oral CE Hearing (if appropriate set interim dates) If necessary extending the time-limit for final decision.

Trigger event

Conduct Enquiry Management

(Diarised date for CEM arrives)

What must be done

1. CJ to consider the complaint in the light of any response from the subject and decide:
 - a. whether the matter should be referred to the JSC? or
 - b. can the matter be determined forthwith (i.e. no substantial dispute as to fact)? If so, make final determination.
 - c. are there any disputed issues which need to be determined? If so decide how. Written or oral submissions? Should there be a timetable for submissions? Set the date when they will be considered or heard i.e final disposal.
2. Send notice of decision to the complainant (including, where applicable an explanation of the procedure according to which any disputed issues will be resolved + date set)
3. Send notice of decision to the subject (including, where applicable an explanation of the procedure according to which any disputed issues will be resolved + date set)
4. Where further submissions are invited, diarise date set for final disposal.

Time Limits:

- The Complainant should receive notice as to disposal or what happens next within 14 days of the deadline for subject's response.
- Where there further submissions or a hearing is considered appropriate the deadline for the final determination is 56 days from deadline for the subject's response.
- The CJ should extend the 56 day deadline if procedural fairness requires it.

Either: Matter determined forthwith

Log	File
1. Decision including any action taken	1. Record decision
2. Date of final disposal	2. Record what if any action is taken with reference to Para 11
	3. Copies of notices to complainant and subject.
	4. File note confirming notices served.
	5. Close and archive file.

Or: CJ to determine facts

Log	File
1. Decision	1. File Note: Identifying issue/s in need of resolution and setting out the procedure for determining them.
2. written submissions or oral hearing	2. Time table set for submissions (if applicable).
3. Enter date set for CE Hearing or consideration of written submissions	3. Copies of notices to complainant and subject.
	4. File note confirming notices served.
	5. Record –Date set and diarised for final disposal.

NOTES

If it should become apparent to the Chief Justice that matters are raised which should be considered by a disciplinary tribunal the matter should be referred to the Judicial Services Commission

Forms

D2c and D2J - Chief Justice's decision after consideration of further submissions

The notice to the complainant and the judge should explain the CJ 's decision as regards any disputed fact and his decision as to the appropriate action by reference to paragraph 12 of the procedures which provides that:

Having determined the matter he may:

- a. Dismiss the complaint
- b. Take no further action
- c. Give pastoral advice
- d. Recommend further training
- e. Issue a warning in more serious cases
- f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

Provided that at any time the Chief Justice may refer the matter to the JSC if it becomes clear that the matters alleged are more serious than at first appeared and disciplinary proceedings are therefore warranted.

The complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

Trigger event

Date diarised for Conduct Enquiry - consideration of further submissions written or oral

What must be done

1. Determine the disputed facts in accordance with procedure set at CEM
2. Determine appropriate action by reference to Para 12
3. Notify complainant and Subject of decision
4. close file

Time Limits

Within 56 days of deadline for subject's response.

Section 2

The Supporting Materials

The following documents are suggested forms for the various notices they can and should be adapted to the circumstances of each complaint.

The aim should be to provide a clear explanation of any decision and to explain clearly what will happen next.

Note: the draft notices have not been reproduced here

Complaints Procedure File

Office of the Chief Justice

CONFIDENTIAL

Case Number

Complainant

Family Name

Forenames

Address

House
 Road
 Town
 Island and region

Complainant's Language

Date	Progress	Notes	Date set in DIARY
	Complaint received		
	Preliminary Examination		
	Conduct Enquiry Management		
	Conduct Enquiry Consideration of further submissions (Written or Oral)		
	Referred to Judicial Services Commission		
	File closed		

Complaints Procedure File

Office of the Chief Justice

Inner file sheet - CONFIDENTIAL

Subject

Family Name

Forenames

Judicial Office held

--

Date of alleged misconduct

--

Address

House
Road
Town
Island and region

--

Where the complaint relates to a case
Case number

--

Complaint Progress Checker

Computer Log	Date + initials	Progress	CHECK	Date + Initials
Initial details entered		Received and acknowledged		
		Preliminary Examination		
Updated after PE		Summarily Rejected – Notice to Complainant		
		Summarily Rejected – Notice to Subject*		
		Referred for CE – Notice to Complainant		
		Referred for CE – Notice to Subject		
		Response received from Subject		
		Time for Subject's response lapses		
Updated after CEM		Conduct Enquiry Management		
		Referred to JSC Notice to Complainant		
		Referred to JSC Notice to Subject		
		Final Decision – Notice to Complainant		
		Final Decision – Notice to Subject		
		Directions for further submissions sent to Complainant		
		Directions for further submissions sent to Subject		
Updated after CE		Conduct Enquiry – Consideration of further submissions (written or oral)		
		Decision sent to Complainant		
		Decision sent to Subject		

* if it is decided that Subject should be notified when complaint is first received

Form A1C

Office of the Chief Justice
Supreme Court of Vanuatu
[The Court Crest]

Complaint No: [20xx/xxx]

[DATE]

PRIVATE AND CONFIDENTIAL

To:

[Name of Complainant]

[Address Complainant]

Notice of Acknowledgement - Complaint Number: [20xx/xxx]

I write to acknowledge that I have today received your complaint which has been allocated the Complaint Number which appears on this notice. Your complaint will now be subject to **Preliminary Examination**. You will be informed as to the outcome of that examination within 28 days. That is on or before [Insert deadline for notification of outcome of preliminary examination]

The purpose of Preliminary Examination is to confirm that your complaint is within the time limit, includes all the information required by the rules and that your complaint relates to the kind of conduct that can be considered under these procedures. If that is so, a **Conduct Enquiry** will be commenced and the notice you receive will explain what happens next.

If you have not provided sufficient information or if the matter you raise is out of time or relates to behaviour which cannot be considered under these procedures your complaint will be summarily rejected. The notice you receive will explain why your complaint was rejected.

Please note that in all future correspondence you should identify this matter by reference to the Complaint Number.

[signature]

[Name]

On behalf of the Chief Justice

IMPORTANT NOTICE: The complaints procedures are designed to ensure that all complaints about judicial conduct are brought to the attention of the Chief Justice so that they can be dealt with swiftly and fairly. The procedures are concerned to ensure high standards of judicial conduct; a complaint cannot alter the outcome of any case nor can any compensation be awarded.

If it becomes apparent that the misconduct alleged may be sufficiently serious to warrant disciplinary proceedings the Chief Justice will immediately refer the matter to the Judicial Services Commission which has the power to deal with such matters.

Section 3

The procedures
and
Users' guide

PROCEDURES FOR RECEIVING AND HANDLING COMPLAINTS ABOUT THE CONDUCT OF JUDICIAL OFFICERS

Introduction

These procedures set out how complaints regarding judicial conduct will be received and determined by the Chief Justice. Through these procedures the Chief Justice aims to promote high standards of judicial conduct and to enhance the public's confidence in the judiciary by ensuring that complaints are determined swiftly and fairly.

These procedures cannot be used to call into question a judge's conduct in exercising his or her discretion and powers in relation to case management, decision making or sentencing. No complaint will be accepted in any case where the conduct complained of gives grounds for an appeal or review, regardless of whether or not the time for appeal or review has lapsed.

These procedures are not appropriate to deal with any allegation of criminal activity. Judges must obey the law and if you believe a judge has broken the law you should report the matter to the police.

The procedures provide for the receipt and preliminary determination of complaints regarding the conduct of any judicial officer and for the matter to be referred to the Judicial Services Commission as soon as it becomes clear that disciplinary action might be warranted.

These procedures do not affect the powers of the Judicial Services Commission to initiate an enquiry into any matter.

Definitions

"Judicial Officer" - Includes the Chief Justice, Supreme Court Judges, Chief Magistrate, Senior Magistrates, Magistrates and Island Court Justices

"The Subject" refers to the judicial officer who is the subject of the complaint under consideration.

"Conduct" refers to the behaviour of a judicial officer both in and out of court but does not include the exercise of proper judicial function in hearing and deciding a case.

"misconduct" is conduct or behaviour which is inappropriate for a judicial officer and which might lessen the respect of observers for the individual judge or the judicial office.

"Disciplinary matter" Means a matter in which the alleged misconduct could found the removal or suspension of a judicial officer as provided for by the Constitution and The Judicial Services and Courts Act. "Disciplinary action" and "disciplinary proceedings" should be interpreted accordingly.

Who may complain?

1. Any person who observes misconduct by judicial officer may report that conduct to the Chief Justice for investigation. The Chief Justice may appoint an administrative officer to receive complaints on his behalf. Any complaint alleging misconduct by the Chief Justice should be addressed to the next most senior Judge who may receive it and progress it under these rules,

The form of the complaint

2. A complaint must be in writing and it must:
 - a. Give the full name and address of the complainant, and
 - b. Identify the judicial officer who is the subject of the complaint, and
 - c. Give full particulars of the behaviour alleged to constitute misconduct including:

- i. The date, time and place, and
 - ii. A description of exactly what it is alleged that the subject did, and
 - iii. Where the alleged misconduct took place during a hearing, the name and number of the case, and
- d. Set out the evidence upon which the complainant will rely, and
- e. Be addressed to the Chambers of the Chief Justice and clearly marked "Complaint – Confidential."

Time limit for making a complaint

3. A complaint must be received by the Chief Justice within 6 months of the date on which the alleged misconduct took place. Save that the Chief Justice may exceptionally admit a complaint out of time if he believes the interest of justice requires him to do so.

Record

4. Upon receipt all complaints will be recorded and allocated a unique Complaint Number. The complainant will receive an acknowledgment giving the date received and the allocated Complaint Number. The record will be updated to record progression and disposal of the complaint.

Preliminary examination

5. Upon receipt of the complaint the Chief Justice or his delegate will conduct a preliminary examination of the complaint which may be
 - a. summarily rejected, or
 - b. referred for a conduct enquiry

Rejection

6. A complaint will be summarily rejected if
 - a. it is incomplete, or
 - b. it is received more than six months after the incident alleged to constitute misconduct, or
 - c. the subject is not a judicial officer, or
 - d. it is not a complaint about judicial conduct within the meaning of these rules, or
 - e. the complaint alleges criminal behaviour, or
 - f. the alleged conduct constitutes grounds for an appeal or review, or
 - g. it is frivolous or vexatious

Conduct enquiry

7. The complaint will be referred for a conduct enquiry where the matters alleged would, if proven, amount to misconduct, provided that if in the opinion of the Chief Justice the matters alleged are sufficiently serious to warrant disciplinary action the matter shall be immediately referred to the Judicial Services Commission.

Time for the preliminary examination

8. Within 28 days of the date on which the complaint was received the complainant should receive a notice as to the result of the preliminary examination:
 - a. Where the complaint is summarily rejected the notice will give the reasons why, and
 - b. where the complaint is referred for a Conduct Enquiry the notice will set out what will happen next.

Subject of complaint to be informed of conduct enquiry

9. Where it is determined that grounds exist for a conduct enquiry the subject of the complaint will immediately be informed to that effect, provided with a full copy of the complaint and advised as to the form of the enquiry and the possible outcomes. No further action will take place until either,
 - a. the subject of the complaint has given his or her response to the allegation, or

- b. 28 days have elapsed and the subject has made no response.

Disciplinary matters to be passed to the Judicial Services Commission

10. Upon receipt of the subject's response the Chief Justice shall consider whether disciplinary proceedings are warranted either
 - a. on the basis of the admitted facts or
 - b. on the basis of facts alleged in the complaint and contested by the subject of the complaint.

Where disciplinary proceedings are warranted the Chief Justice will immediately refer the matter to the Judicial Services Commission with his reasons. The subject and complainant will be informed.

Minor misconduct - behaviour admitted

11. Where the subject of the complaint admits behaviour which in the opinion of the Chief Justice constitutes a minor misconduct insufficient to warrant disciplinary action, the Chief Justice will determine the appropriate disposal. He may:
 - a. Determine that there was no misconduct, or
 - b. Take no further action on the basis that the misconduct was very minor or trivial, or
 - c. Give pastoral advice, and, or
 - d. Recommend further training, or
 - e. Issue a warning.
 - f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

The Complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

Minor misconduct - behaviour disputed

12. Where the subject of the complaint contests matters alleged in the complaint, the Chief Justice may take whatever steps he deems appropriate to determine whether any misconduct took place always provided that such steps shall be appropriate, fair and proportionate to the seriousness of what is alleged. Having determined the matter he may:
 - a. Dismiss the complaint
 - b. Take no further action
 - c. Give pastoral advice
 - d. Recommend further training
 - e. Issue a warning in more serious cases
 - f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

Provided that at any time the Chief Justice may refer the matter to the JSC if it becomes clear that the matters alleged are more serious than at first appeared and disciplinary proceedings are therefore warranted.

The complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

Finality

13. The decision of the Chief Justice with respect to a complaint about judicial conduct is final.

Confidentiality

14. Prior to its determination the complaint, the name of the complainant and the name of the subject are confidential information. Any officer or employee of the court who receives or handles the complaint receives the information in confidence. A record of all complaints and their determination will be kept and the Chief Justice will prepare an annual report identifying the nature of each complaint, reporting its determination and any action taken.

Where the matter is referred to the JSC for disciplinary proceedings the matter will be reported.

USERS' GUIDE TO MAKING A COMPLAINT ABOUT JUDICIAL BEHAVIOUR

The Chief Justice has put in place procedures for receiving complaints about the behaviour of judicial officers. These procedures are designed to ensure that all such complaints are dealt with quickly and fairly.

Who is a judicial office holder?

The procedures apply to all judges, all magistrates and all island court justices.

The objectives of the procedures are

- to ensure that judicial office holders conduct themselves in a manner appropriate to their office and
- to demonstrate that the judiciary recognises that the public is entitled to expect high standards of personal conduct from judicial office holders and is prepared to be held accountable when conduct falls short of expectations.

Who can complain?

Anyone who observes misconduct on the part of a judge may make a complaint.

What can you complain about?

Judicial Conduct refers to the personal conduct of the judicial officer both in and out of court but does not include conduct in the course of case management or decision making.

The following are some examples of the kind of thing which might form the subject of a complaint. Complaints could be made about:

- Rudeness
- Offensive language
- Derogatory remarks, or behaviour, based on race, gender or disability
- Delay or omission in relation to judicial duties
- The use of the judicial office or status to gain personal advantage
- A conviction - If you believe the judicial officer has been convicted of a criminal offence which should result in his or her removal from office.

What cannot be raised as a complaint?

- **Judicial decisions** - You cannot complain about the judge's behaviour in the exercise of his or her judicial function that means his or her decisions with respect to case management, the outcome of a case, the sentence or any finding of liability or award of damages.
- **Allegations of criminal behaviour** - If you wish to allege that a judge has committed a criminal offence, the matter must be reported to the police for investigation.
- **Matters subject to appeal or review** - If an appeal or review can or could have been founded on the basis of behaviour about which you wish to complain a complaint will not be entertained. This is to prevent the restrictions which the law puts on appeals being circumvented and also to prevent the same matter being considered more than once.

What are the possible outcomes?

The resolution of a complaint about judicial conduct cannot alter decision or outcome of any case.

The procedures are designed to be fair to both you as the complainant and to the judge against whom you complain. The judge will be invited to respond to your complaint and if necessary the Chief Justice will consider evidence before deciding if the complaint is made out.

If the judicial officer is found to have committed any misconduct you will be notified.

- You may receive an apology
- The judge in question may receive such advice or further training as the Chief Justice believes is necessary to prevent reoccurrence of the error.

Serious misconduct - If your complaint is found to allege serious misconduct it will be referred to the Judicial Services Commission (JSC) for disciplinary proceedings. The JSC is given statutory authority to conduct disciplinary proceedings where grounds may exist for the JSC to recommend the removal of a judicial officer in accordance with the provisions of the constitution.

Making a complaint

Time limit

A complaint must be received by the Chief Justice within 6 months of the date on which the alleged misconduct took place.

Exceptionally the Chief Justice may admit a complaint out of time if he believes the interest of justice requires him to do so.

Complaints must be in writing

If you wish to make a complaint you must do so in writing; your complaint must:

1. Give your full name and address, and
2. Identify the judicial officer who is the subject of your complaint, and
3. Give full particulars of the behaviour you allege constitutes misconduct including:
 - a. The date, time and place, and
 - b. A description of exactly what it is alleged that the subject did, and
 - c. Where the alleged misconduct took place during a hearing, the name and number of the case, and
4. Set out the evidence upon which you will rely, and

You should mark your complaint "**Complaint – Confidential**" and address it to the Chambers of the Chief Justice. If your complaint relates to the Chief Justice then you should address your complaint to the next most senior Judge.

What will happen next?

Immediately your complaint is received you will receive an acknowledgment and notice of the Complaint Number assigned to your complaint.

Within 28 days of your complaint being received you will receive notification of the outcome of the preliminary examination.

At this stage your complaint may be summarily rejected on the grounds that it is

- a incomplete, or
- b out of time, or
- c is not about a judicial officer, or
- d is not about judicial conduct within the meaning of the procedures or does not allege any misconduct, or
- e alleges criminal activity, or
- f is about behaviour which could have founded an appeal or review, or
- g is frivolous or vexatious

Where a complaint is summarily rejected you will receive an explanation of why with the notification.

Conduct enquiry

Provided your complaint is not rejected it will be referred for a Conduct Enquiry. The judge who is the subject of your complaint will be notified of your complaint and given 28 days in which to respond to your allegations. After that time the Chief Justice will decide whether the complaint raises issues which are so serious they must be referred to the JSC in which case a referral will be made and you will be notified to that effect.

In cases where only minor misconduct is alleged the Chief Justice will determine how any disputed issues should be resolved and will normally provide a decision within 56 days of the date when the period for the subject's response lapsed.

Overall time

In all cases you should receive an acknowledgement and the result of the Preliminary Examination within 28 days of your complaint being received.

Where the misconduct is not serious enough to warrant reference to the JSC you will receive notice of the Chief Justice's final determination this will normally be within 4 months of your complaint being received by the Chief Justice.

Where the misconduct is sufficiently serious to be referred to the JSC you will normally receive notification of referral within 56 days of the receipt of your complaint.



Pacific Judicial Development Programme

TOOLKIT FOR BUILDING PROCEDURES TO HANDLE COMPLAINTS ABOUT JUDICIAL CONDUCT

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

