



Administrative Instruction – Instruction administrative

Ref. ICC/AI/2022/002

Date: 14 March 2022

UNSATISFACTORY CONDUCT AND DISCIPLINARY PROCEEDINGS

Pursuant to Staff Rule 110.4 (f), the Registrar, with the consent of the President and the Prosecutor, in accordance with sections 3.2 and 3.3 of the [Presidential Directive on Procedures for the Promulgation of Administrative Issuances](#), and for the purpose of implementing Staff Regulations 1.2, 10.1 and 10.2, and Chapter X of the Staff Rules, hereby promulgates the following:

Section 1

Purpose

- 1.1 The purpose of this Administrative Instruction is to supplement and facilitate the application of Chapter X of the Staff Rules of the International Criminal Court (“Court”), and to outline the basic requirements of due process to be afforded to a staff member against whom unsatisfactory conduct is alleged.

Section 2

Scope of application

- 2.1 This Administrative Instruction applies to all staff members and to staff members on secondment or on loan from a releasing organisation applying the United Nations common system of salaries and allowances, subject to the provisions of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances.
- 2.2 This Administrative Instruction does not apply to counsel, consultants, individual contractors, interns and visiting professionals, who remain subject to the provisions and procedures applicable to them under their terms of service.



- 2.3 Disciplinary proceedings against elected officials are governed in accordance with [articles 46 and 47 of the Rome Statute](#) and [chapter 2, section IV, subsection 1 of the Rules of Procedure and Evidence](#), and do not fall within the scope of this Administrative Instruction.
- 2.4 In case of inconsistency between this Administrative Instruction and the Rome Statute, the Rules of Procedure and Evidence, any resolution of the Assembly of State Parties (“ASP”), the Staff Regulations or the Staff Rules, these latter instruments shall prevail.

Section 3

Definitions

- 3.1 For the purposes of this Administrative Instruction:
- (a) The “responsible official” is:
- (i) The Prosecutor, for reported unsatisfactory conduct on the part of staff members serving the Office of the Prosecutor.
 - (ii) The Registrar, for reported unsatisfactory conduct on the part of staff members serving the other organs of the Court, as well as offices administratively linked to the Registry such as the Secretariat of the ASP and the Secretariat of the Trust Fund for Victims.
- (b) “Unsatisfactory conduct” means failure by a staff member to act in accordance with any official document of the Court governing rights and obligations of staff members, such as the Staff Regulations and Rules and the [Financial Regulations and Rules](#), or any relevant resolutions and decisions of the ASP, or failure to observe the standards of conduct expected of an international civil servant.
- (c) “Investigation” means an analytical fact-finding process designed to gather information to determine whether unsatisfactory conduct has occurred, and, if so, the person(s) responsible. It is an administrative process concerned with the potential failure to observe the standards of conduct expected of Court personnel and serves as a basis for disciplinary proceedings or other appropriate action.
- (d) “Elected officials” means a judge, the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court.



- (e) “Disciplinary measures” means the measures listed under Staff Rule 110.6 (a).
 - (f) “Administrative measures” include, but are not limited to, an oral or written reprimand by a supervisor, reassignment and/or change of duties. Such measures do not constitute disciplinary measures.
 - (g) “Managerial action” includes, but is not limited to, an advisory communication, training and/or coaching. Such action does not constitute a disciplinary measure.
- 3.2 All references to “staff members” shall include, where applicable, former staff members.
- 3.3 Where documentation is transmitted to a staff member, the “date of receipt” shall be the earliest of:
- (a) The date on which the staff member acknowledges receipt;
 - (b) The date on which an electronic return receipt is generated; or
 - (c) Seven calendar days from the date on which the documentation was transmitted to the staff member’s contact information on file with the Court, unless the staff member provides sufficient evidence of circumstances beyond the staff member’s control that impeded the staff member’s receipt of the documentation.

Section 4

Unsatisfactory conduct

- 4.1 Unsatisfactory conduct for which disciplinary measures may be imposed includes, but is not limited to:
- (a) Acts or omissions in conflict with the duties and obligations of staff members set forth in any official document of the Court;
 - (b) Unlawful acts (e.g. theft, fraud, possession or sale of illegal substances, smuggling) on or off the Court premises, and whether or not the staff member was officially on duty at the time;
 - (c) Failure to take prompt action and report it to the Human Resources Section when a claim was made against the staff member with respect to an alleged failure to



meet his or her private legal obligations, in accordance with the [Administrative Instruction on Private Legal Obligations of Staff Members](#);

- (d) Misrepresentation or false certification in connection with any claim or benefit from the Court, including failure to disclose a fact material to that claim or benefit;
- (e) Assault upon or threats to other staff members, unless in accordance with the [Administrative Instruction on the Use of Physical Force and of Firearms by ICC Security Officers](#);
- (f) Discrimination, harassment, including sexual harassment, and abuse of authority;
- (g) Misuse of office equipment, files, electronic files, documents or any asset of the Court;
- (h) Breach of confidentiality;
- (i) Violations of the Court's information protection policies;
- (j) Abuse of the Court's privileges and immunities;
- (k) Any act or omission contravening the Financial Regulations and Rules;
- (l) Failure to comply with obligations with regard to the prevention of a conflict of interest;
- (m) Mishandling of contract obligations and relations with third parties leading to loss of property or assets, or generating liabilities for the Court;
- (n) Breach of fiduciary obligations *vis-à-vis* the Court;
- (o) Failure to comply with obligations with regard to acceptance of any honour, decoration, favour, gift or remuneration;
- (p) Retaliation, by way of any direct or indirect detrimental action recommended, threatened or taken, against a staff member because that person has:
 - reported: (i) unsatisfactory conduct, (ii) serious misconduct and serious breach of duty as defined in rule 24 of the Rules of Procedure and Evidence, or (iii)



- misconduct of a less serious nature as defined in rule 25 of the Rules of Procedure and Evidence; or
- cooperated in good faith with a duly authorized investigation, audit, or oversight activity;
- (q) Making a report or providing information that is intentionally false or misleading;
- (r) Failure to cooperate with an investigation, without reasonable excuse, or attempts to impede, obstruct or improperly influence an investigation;
- (s) Sexual exploitation and sexual abuse;
- (t) Acts or behaviour that may discredit the Court.
- 4.2 Unsatisfactory conduct may also include assisting in, or contributing to, the commission of unsatisfactory conduct.

Section 5

Reporting information about suspected unsatisfactory conduct

- 5.1 Staff members who become aware of, or receive information regarding, suspected unsatisfactory conduct, past or present, have a duty to report this information promptly and an obligation to cooperate with duly authorized investigations, audits, and oversight activities such as evaluations and inspections. Staff members shall be protected from retaliation for complying with these duties.
- 5.2 Information about suspected unsatisfactory conduct shall be reported in accordance with section 4 of the [Administrative Instruction on Investigations of Unsatisfactory Conduct](#).

Section 6

Investigations

- 6.1 The investigation process is governed by the Administrative Instruction on Investigations of Unsatisfactory Conduct.



- 6.2 In accordance with the [Operational Mandate of the Independent Oversight Mechanism](#), the Independent Oversight Mechanism (“IOM”) shall receive all allegations of suspected unsatisfactory conduct and has discretionary authority to decide which matters to pursue.
- 6.3 If the IOM decides to investigate a matter, no further action should be taken by any other body within the Court, without first consulting the IOM, until the IOM has completed its investigation.

Section 7

Disciplinary proceedings

Initial actions on an investigation report

- 7.1 Upon receipt of an investigation report recommending the initiation of disciplinary proceedings against a staff member, the responsible official shall decide, within 10 working days from the date of submission of the investigation report, whether to initiate disciplinary proceedings.
- 7.2 Following a decision to initiate disciplinary proceedings, the responsible official shall provide the staff member with:
- (a) The allegations of unsatisfactory conduct in writing, which should include the specific obligations or standards of conduct that the staff member breached.
 - (b) Notification of:
 - (i) The staff member’s right to respond to the allegations of unsatisfactory conduct and to provide any evidence in accordance with section 7.3;
 - (ii) The staff member’s right to be represented or assisted by a staff member or a former staff member of his or her choosing in accordance with Staff Rule 110.2 (d); and
 - (iii) In relevant cases, the possibility of financial recovery pursuant to Staff Rule 101.3 (d).



- (c) A copy of the investigation report and the relevant supporting documentation. The copies of such documentation provided to a staff member may be subject to any measures, including redaction, adopted to ensure that the interests of the Court or its staff members, including privileged information and safety and security concerns, are not adversely affected by the disclosure of particular information.
- 7.3 The staff member shall be given an opportunity to respond in writing to the allegations of unsatisfactory conduct within 30 calendar days of the date of receipt of the allegations. The staff member may request, in writing, additional time to respond. Any such request must be made prior to the expiration of the deadline and must contain reasons for the request. If no response to the allegations of unsatisfactory conduct is received within the specified time limit, the matter may nevertheless proceed, without further notice to the staff member.
- 7.4 On the basis of the entire dossier, the responsible official shall proceed, within 10 working days from the date of receipt of the staff member's response, as follows:
- (a) Decide that the case shall be closed, and the staff member shall be notified that no further action will be taken; or
 - (b) Take managerial action and/or administrative measures, except that no reprimand by a supervisor may be imposed unless unsatisfactory conduct has occurred; or
 - (c) Refer the matter to the Disciplinary Advisory Board for advice as to what disciplinary measures, if any, would be appropriate; or
 - (d) If the evidence clearly indicates that unsatisfactory conduct has occurred, and that the seriousness of the unsatisfactory conduct warrants immediate separation from service, decide that the staff member concerned be summarily dismissed.

Referral to the Disciplinary Advisory Board

- 7.5 Staff Rule 110.2 (b) provides for referral of a case to the Disciplinary Advisory Board for advice as to what disciplinary measures, if any, would be appropriate. Whenever the responsible official decides to refer a case to the Disciplinary Advisory Board, he or she shall inform the staff member in writing of his or her decision within 3 working days from the date when the case was referred to the Disciplinary Advisory Board.



- 7.6 Referral to the Disciplinary Advisory Board may be waived, by mutual agreement of the staff member concerned and the responsible official, under the provisions of Staff Rule 110.2 (b) (i). A waiver means that the staff member agrees to forego Disciplinary Advisory Board proceedings and to have imposed one or more of the disciplinary measures listed in Staff Rule 110.6 (a). Either the staff member concerned or the responsible official may propose a waiver. If there is mutual agreement on the waiver, it shall be recorded in writing.
- 7.7 In accordance with Staff Rule 110.3 (l), if, in the opinion of the responsible official consideration of the case involves sensitive matters specific to one organ, he or she may require, on an exceptional basis, the Chairperson of the Disciplinary Advisory Board to constitute a panel of the Disciplinary Advisory Board (“Panel”) composed solely of members who are staff members of the organ concerned.
- 7.8 Whenever a case is referred to the Disciplinary Advisory Board, the Secretary of the Disciplinary Advisory Board shall:
- (a) Inform the staff member of the composition of the Panel that may consider or review his or her case;
 - (b) Transmit to the staff member a copy of the entire dossier submitted to the Disciplinary Advisory Board; and
 - (c) Advise the staff member of his or her right to be represented or assisted by a staff member or a former staff member of his or her choosing in accordance with Staff Rule 110.2 (d).

Proceedings before the Disciplinary Advisory Board

- 7.9 Pursuant to Staff Rule 110.4 (b), in considering a case, the Disciplinary Advisory Board shall act with maximum dispatch and shall provide its advice to the responsible official within 30 calendar days. This deadline runs from the day a Panel is constituted by the Chairperson of the Disciplinary Advisory Board. The Panel may, under exceptional circumstances, request the responsible official for an extension of the time limit.
- 7.10 The proceedings of the Disciplinary Advisory Board and its [rules of procedure](#) (“Rules of Procedure”) shall be consistent with due process, the fundamental requirements of which are that the staff member concerned has the right to know the allegations against him or her; the right to see or hear the evidence against him or her; the right to rebut



the allegations and the right to present countervailing evidence and any mitigating factors. Staff members are expected to be acquainted with the Rules of Procedure.

7.11 The Disciplinary Advisory Board may request further information from any relevant source, including clarification from the IOM, the responsible official, or the staff member concerned, as appropriate.

7.12 The Disciplinary Advisory Board shall submit its report to the responsible official in accordance with Staff Rule 110.4 (e) and its Rules of Procedure.

Report of the Disciplinary Advisory Board

7.13 The report of the Disciplinary Advisory Board shall contain:

- (a) The allegations of unsatisfactory conduct;
- (b) A summary of the staff member's response to the allegations and to the disciplinary referral, if any;
- (c) A summary of the proceedings;
- (d) The Disciplinary Advisory Board's evaluation of the findings in the investigation report and the response of the staff member;
- (e) If the Disciplinary Advisory Board received further information pursuant to section 7.11, a summary of this information and its relevance to the case;
- (f) Any aggravating or mitigating factors that may be relevant;
- (g) Conclusions on the above;
- (h) Recommendation(s) from the Disciplinary Advisory Board to the responsible official as to what disciplinary measures, if any, may be applied;
- (i) A record of the votes on the advice, including any dissenting or separate opinion.

7.14 The Secretary of the Disciplinary Advisory Board shall transmit with maximum dispatch to the responsible official the report, together with the complete dossier of the case, for final decision.



7.15 The Secretary of the Disciplinary Advisory Board shall also notify the staff member concerned of the date on which the report was transmitted to the responsible official for final decision.

Final Decision

7.16 The final decision on the recommendation of the Disciplinary Advisory Board shall be taken by the responsible official within 30 calendar days of the date of the submission of the report by the Secretary of the Disciplinary Advisory Board.

7.17 The final decision of the responsible official forms part of a staff member's record of service with the Court, and shall be placed in the official status file of the staff member concerned in accordance with the [Administrative Instruction on Official Status File](#).

7.18 In cases of summary dismissal under the terms of Staff Regulation 10.2 (b) and Staff Rule 110.2 (b) (ii):

- (a) The staff member may, within 60 calendar days of receiving written notification of the decision, request that such decision be reviewed by the Disciplinary Advisory Board; and
- (b) Upon receipt of the report of the Disciplinary Advisory Board regarding the request for review of the summary dismissal, the responsible official shall, within 30 calendar days of receipt of the report, decide what action to take in respect thereof.

7.19 In accordance with Staff Rule 110.8, an appeal against a final decision taken by the responsible official at the conclusion of disciplinary proceedings in which the advice of the Disciplinary Advisory Board has been sought may be filed before the Administrative Tribunal of the International Labour Organization.

Section 8

Disclosure of information obtained

8.1 All information obtained at any stage during the disciplinary proceedings shall be considered confidential, subject to:



- (a) The exchange of information among staff members and other persons serving the Court in undertaking their official duties for the Court;
- (b) The exchange of information for the purposes of representation or assistance during the course of disciplinary proceedings in accordance with Staff Rule 110.2(d); and
- (b) The reporting requirements of the Court and the IOM.

Section 9

Suspension during disciplinary proceedings

- 9.1 In accordance with Staff Rule 110.5 (a), a staff member may be suspended from duty at any time, upon consultation with the IOM where possible, following an allegation of suspected unsatisfactory conduct and pending completion of disciplinary proceedings, for a period which should not normally exceed three months. Suspension shall be with pay, unless the responsible official decides that exceptional circumstances warrant suspension without pay. In both cases, such action is without prejudice to the rights and entitlements of the staff member and does not constitute a disciplinary measure.

Suspension with pay

- 9.2 The decision to suspend a staff member with pay may be made by the responsible official following the responsible official's determination that at least one of the following circumstances is met:
- (a) The staff member is unable to continue effectively performing his or her functions, given the nature of those functions;
 - (b) Continued service by the staff member would create a risk that the staff member could destroy, conceal or otherwise tamper with potential evidence, or interfere in any way with the investigation or disciplinary proceedings, including by retaliating against individuals or intimidating a witness;
 - (c) The continued presence of the staff member on the Court's premises could constitute a security or financial risk to the Court and/or its personnel, or could otherwise prejudice the interests or reputation of the Court;



- (d) The staff member's continued presence at the office could have a negative impact on the preservation of a harmonious work environment;
- (e) There is a risk of repetition or continuation of the unsatisfactory conduct.

Suspension without pay

9.3 A staff member may be suspended without pay by the responsible official when at least one of the following conditions is met:

- (a) There are reasonable grounds to believe (probable cause) that the staff member engaged in sexual exploitation or sexual abuse;
- (b) There are exceptional circumstances that warrant the placement of the staff member on suspension without pay because the unsatisfactory conduct is of such gravity that it would, if established, warrant termination or summary dismissal under Staff Rule 110.6 (a) (vii) or (viii), and there is information before the responsible official about the unsatisfactory conduct that makes it more likely than not (preponderance of the evidence) that the staff member engaged in the unsatisfactory conduct.

9.4 Provided that at least one of the conditions of section 9.3 is met, the responsible official may convert the staff member's suspension with pay to suspension without pay at any time pending the conclusion of the disciplinary proceedings.

9.5 If a staff member is placed on suspension without pay and either the allegations of unsatisfactory conduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant termination or summary dismissal, any pay withheld shall be restored. The Court may decide not to restore any pay withheld for the period during which the staff member was placed on suspension without pay if the staff member separates from the Court for any reason prior to the completion of the investigation or disciplinary proceedings, and the matter cannot be pursued as a result of lack of cooperation on the part of the staff member.

Notification of placement on suspension

9.6 The notice of suspension may be communicated to the staff member in hard copy or electronically. Where transmission to the staff member is in hard copy, this shall normally be done by registered mail or by hand. Where such documentation is



transmitted to the staff member, the date of receipt shall be determined in accordance with section 3.3 above.

Obligations of a staff member on suspension

9.7 A staff member placed on suspension shall:

- (a) Immediately surrender his or her Court badge.
- (b) Immediately discontinue performance of his or her official duties.
- (c) Immediately have his or her access to the Court's IT systems suspended. A generic out of office email reply shall be set on behalf of the staff member.
- (d) Immediately return any property of the Court that has been assigned to him or her.
- (e) Immediately surrender any IT equipment, access credentials, tokens and other items that contain, or provide access to, the Court's data. If this cannot be done immediately, the staff member shall arrange to surrender the items within 24 hours of notification of suspension, and shall desist from any use thereof.
- (f) Immediately provide to the Court, and update as necessary during the period of suspension, his or her current contact information, including telephone number(s), personal email address(es) and current residential address.
- (g) Desist from accessing any non-public Court data stored in any non-Court system (e.g. cloud storage services, messaging systems, personal IT equipment and portable storage media).
- (h) Not have a right to copy, extract, export or otherwise obtain Court data from a Court IT system during the period of suspension.
- (i) Remain available to be contacted by the Court through the contact information provided.
- (j) Remain available for the purpose of cooperation with an investigation, participate in the disciplinary proceedings and follow any directions and instructions issued by the Court.



In addition, a staff member placed on suspension shall request written approval from the responsible official if he or she wishes to:

- (k) Be provided with access to a Court IT system during the period of suspension.
- (l) Be provided with a copy of Court data during the period of suspension.
- (m) Be provided with a Court laptop during the period of suspension for the purpose of cooperation with an investigation, participation in the disciplinary proceedings, and/or in order to comply with any other directions and instructions issued by the Court.
- (n) Enter the Court's premises during the period of suspension.
- (o) Leave the duty station during the period of suspension.
- (p) Engage in any outside employment or activities in accordance with Staff Regulation 1.2 (n) and Staff Rule 101.7.

The responsible official shall decide on requests for written approval in consultation with the IOM, as appropriate.

Failure to comply with the requirements of section 9.7 (a)-(p), without reasonable excuse, may constitute unsatisfactory conduct and lead to disciplinary or other appropriate action.

- 9.8 Where the Court has made at least three documented attempts to contact the staff member on suspension using the most recent contact information provided, and the staff member does not contact the Court within 21 calendar days of the last documented attempt, then the matter may proceed to be considered as an abandonment of post under Staff Rule 109.4.

Section 10

Miscellaneous

- 10.1 Disciplinary proceedings may be conducted and documented in either English or French. Submissions by a staff member under this Administrative Instruction may be made in either English or French.



- 10.2 A staff member may request, but shall not have the right to, the translation of any documents at the expense of the Court.
- 10.3 As a general principle, actions by the responsible official under this Administrative Instruction should be taken without undue delay. Time limits under this Administrative Instruction may be modified by the responsible official, taking into account the circumstances of each specific case. Decisions to modify time limits shall be accompanied by cogent reasons.
- 10.4 When a time limit expires on a weekend or a Court holiday, it is automatically extended to the next working day.

Section 11

Final provisions

- 11.1 This Administrative Instruction shall enter into force on 14 March 2022.
- 11.2 The [Administrative Instruction on Disciplinary Procedures \(ICC/AI/2008/001\)](#) is abolished and superseded by this Administrative Instruction, except insofar as disciplinary proceedings initiated prior to the entry into force of this Administrative Instruction shall continue to be handled in accordance with the provisions of ICC/AI/2008/001.

Peter Lewis
Registrar