

Rules in respect of Disciplinary Proceedings 紀律程序規則

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| <p>1. Interpretation</p> <p>1.1 “Ordinance” means the Social Workers Registration Ordinance (Cap. 505), Laws of Hong Kong.</p> <p>1.2 “Legal practitioner” means a practicing solicitor or barrister within the meaning of the Legal Practitioners Ordinance (Cap. 159), Laws of Hong Kong.</p> <p>1.3 “Registrar” means the Registrar appointed under section 15 of the Ordinance including the staff assisting him in connection with a hearing.</p> <p>2. Hearing in Public or in Camera</p> <p>2.1 At the discretion of the Disciplinary Committee, a hearing may be open to the public or partly open to the public and partly held in camera with due regard to:-</p> <p>(a) the interests of the Complainant(s);</p> <p>(b) the interests of the registered social worker, i.e. the Respondent of the hearing; or</p> <p>(c) the interests of the witnesses.</p> <p>2.2 At any stage of a hearing, the Disciplinary Committee may decide that the remainder of the hearing should be open to the public or be held in camera, as the case may be.</p> <p>2.3 The Disciplinary Committee may deliberate in private (with or without the legal practitioner appointed pursuant to section 28 of the Ordinance and the Registrar) at any time and for any purpose at any stage of the hearing, before or after it.</p> <p>3. Representation</p> <p>3.1 Any party to a hearing may be represented by a legal practitioner.</p> <p>3.2 The Board may appoint a legal practitioner to advise the Disciplinary Committee pursuant to section 28 of the Ordinance.</p> <p>4. Adjournment of Hearing</p> <p>4.1 The presiding member of the Disciplinary Committee may adjourn a hearing to such time or such date as he thinks fit.</p> <p>4.2 The Registrar shall, where appropriate, give notice of an adjournment to the parties of the complaint.</p> | <p>1. 詮釋</p> <p>1.1 「《條例》」意即香港法例第 505 章《社會工作者註冊條例》。</p> <p>1.2 「法律執業者」意即香港法例第 159 章《執業律師條例》包含的律師或大律師。</p> <p>1.3 「註冊主任」意即根據《條例》第 15 條被委任的註冊主任，包括協助註冊主任處理關於紀律聆訊事宜的職員。</p> <p>2. 公開或非公開聆訊</p> <p>2.1 紀律委員會可因應以下情況酌情決定聆訊可以向公眾以公開或以部分公開部分非公開的形式進行：</p> <p>(a) 投訴人的利益；</p> <p>(b) 註冊社工即答辯人的利益；或</p> <p>(c) 證人的利益。</p> <p>2.2 在聆訊的任何階段中，紀律委員會視當時情況可決定聆訊的其餘部份應向公眾公開或以非公開形式進行。</p> <p>2.3 紀律委員會可在紀律聆訊的任何階段，包括之前或之後，隨時及為任何目的，進行閉門商討（根據《條例》第 28 條被委任的法律顧問及註冊主任可在場或不在場）。</p> <p>3. 代表</p> <p>3.1 聆訊任何一方均可由法律執業者代表出席。</p> <p>3.2 根據《條例》第 28 條，註冊局可委任法律執業者為紀律委員會提供法律意見。</p> <p>4. 聆訊的押後</p> <p>4.1 紀律委員會主席可押後聆訊至其認為適當的時間或日期。</p> <p>4.2 在適當情況下，註冊主任須將押後聆訊一事通知聆訊雙方。</p> |
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| <p>5. Record of Proceedings</p> <p>5.1 The Registrar may cause the proceedings to be recorded on tape and may arrange for the transcription of the tape recording into a verbatim record in writing.</p> <p>5.2 If a verbatim record in writing of the proceedings or any part of it has been prepared, the presiding member of the Disciplinary Committee, on application to him by any party to the proceedings and on payment to the Board of the appropriate prescribed fee for the issue of the record, shall furnish the party with a copy of the record or part.</p> <p>6. Withdrawal and Absence</p> <p>6.1 If any Complaint has been withdrawn prior to or at any stage of the proceedings, the Disciplinary Committee may, when the circumstances warrant the Disciplinary Committee to do so, accept the withdrawal or proceed with a disciplinary hearing notwithstanding the withdrawal.</p> <p>6.2 Subject to sub-rules 7.2 and 7.3, if a party, either the Complainant or the Respondent, has failed to appear at any stage of the hearing, the presiding member or the Disciplinary Committee may take such steps as it considers appropriate including but not limited to adjourn the hearing to another date, dismiss the complaint or proceed with the disciplinary hearing without hearing from the absent party.</p> <p>7. Opening of Hearing</p> <p>7.1 At the opening of a hearing, the Registrar shall introduce members of the Disciplinary Committee to the parties attending the hearing and the Disciplinary Committee shall deal with any procedural matters arising (if any).</p> <p>7.2 If the Respondent is not present, nor represented by his/her legal representative, the Registrar shall furnish to the Disciplinary Committee such evidence as the Disciplinary Committee may require to prove that a notice of hearing issued in accordance with section 27(5) of the Ordinance has been served on the Respondent.</p> <p>7.3 On the Disciplinary Committee being satisfied as to the evidence under sub-rule 7.2 and at the discretion of the Disciplinary Committee, the Disciplinary Committee may proceed with the hearing in the absence of the Respondent.</p> | <p>5. 聆訊紀錄</p> <p>5.1 註冊主任可將聆訊程序作錄音紀錄及安排將該錄音的紀錄轉換成逐字逐句的書面紀錄。</p> <p>5.2 若聆訊程序或其中任何部分的逐字逐句書面紀錄已備妥，聆訊程序中任何一方可向紀律委員會的主席提出申請及向註冊局繳付訂明的費用，以獲取該紀錄或部份紀錄的副本。</p> <p>6. 撤銷投訴和缺席聆訊</p> <p>6.1 如情況需要，即使投訴人於聆訊進行前，又或於紀律程序中的任何階段撤銷任何一項投訴，紀律委員會可因應情況接受該撤銷或繼續進行聆訊。</p> <p>6.2 受制於程序規則第 7.2 和第 7.3 條的規定，如任何一方在聆訊的任何階段缺席聆訊，則紀律委員會主席或紀律委員會可採取其認為恰當的行動，包括但不限於將聆訊日期押後、駁回任何一項投訴或在不聽取其陳詞的情況下進行聆訊。</p> <p>7. 聆訊的開始</p> <p>7.1 於聆訊開始時，註冊主任向出席聆訊的各方介紹紀律委員會成員及由紀律委員會處理聆訊各方提出的有關程序事宜的申請（如有）。</p> <p>7.2 如答辯人缺席，亦沒有由其律師代表出席，則註冊主任須向紀律委員會呈交委員會所需的證據，以證明已向答辯人發出根據《條例》第 27(5)條的聆訊通知書。</p> <p>7.3 如紀律委員會信納程序規則第 7.2 條的證據，即可酌情決定在答辯人缺席的情況下進行聆訊。</p> |
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| <p>7.4 If the Respondent is present at the hearing and is not legally represented, the presiding member of the Disciplinary Committee shall inform him/her of his/her right to cross-examine witnesses, to give evidence and to call witnesses on his/her behalf.</p> | <p>7.4 如答辯人出席聆訊且無律師代表，紀律委員會主席須告知答辯人其盤問證人、提供證據及為自己傳召證人的權利。</p> |
| <p>8. Objections on Point of Law</p> | <p>8. 就法律論點提出反對</p> |
| <p>8.1 After the opening of the hearing, the Respondent or his/her legal representative, may object to the complaint on a point of law and, upon such objection, the Complainant or his/her legal representative may reply thereto and, if any such party replies to such objection, the Respondent or his/her legal representative may answer such reply.</p> | <p>8.1 聆訊開始後，答辯人或其法律代表可就法律觀點反對任何投訴，而在該項反對提出後，投訴人或其法律代表可就該項反對作出答覆；如投訴人或其法律代表就該項反對作出答覆，則答辯人或其法律代表可就該項答覆提出答辯。</p> |
| <p>8.2 If such objection is upheld by the Disciplinary Committee, the complaint to which such objection relates shall be considered only subject to such objection.</p> | <p>8.2 如紀律委員會支持該項反對，則在考慮與該項反對有關的投訴時，只可在不牴觸該項反對的情況下作出考慮。</p> |
| <p>9. Order of Procedure</p> | <p>9. 聆訊的先後程序</p> |
| <p>9.1 Subject to other rules hereof, the following order of procedure must be observed in a hearing:-</p> | <p>9.1 在符合紀律程序規則其他條款的情況下，聆訊須遵守以下程序：</p> |
| <p>(a) the Complainant, or his/her legal representative shall present the case against the Respondent and adduce evidence in support thereof and shall close the case against the Respondent;</p> <p>(b) at the conclusion of the presentation of the case against the Respondent, the Respondent in person, or his/her legal representative, may make either or both of the following submissions in relation to any complaint in respect of which evidence has been adduced-</p> <p>(i) that sufficient evidence has not been adduced upon which the Disciplinary Committee can find that the facts alleged in that complaint have been proved;</p> <p>(ii) that the facts alleged in the complaint are not such as to constitute the offence complained of,</p> <p>and where such submission is made, a reply thereto may be made by the Complainant or his/her legal representative; and the Respondent or his/her legal representative may answer such reply;</p> <p>(c) if a submission is made under paragraph (b), the Disciplinary Committee shall consider and determine whether the submission shall be upheld and -</p> <p>(i) the presiding member of the Disciplinary Committee shall announce the determination</p> | <p>(a) 投訴人或其法律代表須向答辯人提出提控的案情及援引證據以支持其提控，及完成向答辯人的提控；</p> <p>(b) 當提出提控答辯人的案完畢後，答辯人或其法律代表可就有任何已援引證據的提控作出以下任何一項或兩項的陳詞：</p> <p>(i) 並無足夠的舉證，使紀律委員會能據之而裁定投訴中所指控的事實已經證實；</p> <p>(ii) 投訴中所宣稱的事實並不構成投訴中所指控的違紀行為。</p> <p>而凡有該等陳詞後，投訴人或其法律代表可就該等陳詞作出答覆。如投訴人或其法律代表如此答覆，而答辯人或其法律代表亦可就該項答覆作出答辯。</p> <p>(c) 若有根據(b)項作出的陳詞，紀律委員會須考慮及決定是否支持此項陳詞：</p> <p>(i) 紀律委員會主席須宣佈該委員會的決定；</p> <p>(ii) 如紀律委員會支持就任何一項投訴而作出的陳詞，則須紀錄該</p> |

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| <p>of the Disciplinary Committee;</p> <p>(ii) if the Disciplinary Committee upholds the submission in respect of any complaint, the finding shall be recorded that the complaint is not proven;</p> <p>(iii) if the Disciplinary Committee rejects the submission, the presiding member of the Disciplinary Committee shall call upon the Respondent to state his/her case;</p> <p>(d) the Respondent, in person or by his/her legal representative may then present his/her case, adduce evidence in support of his/her case;</p> <p>(e) at the conclusion of the case of the Respondent, the Respondent or his/her legal representative may make his/her closing submission to the Disciplinary Committee. The Complainant or his/her legal representative, may then make his/her closing submission to the Disciplinary Committee in reply, and if there is such a closing submission made by the Complainant or his/her legal representative, the Respondent or his/her legal representative may make a further submission to the Disciplinary Committee in reply.</p> | <p>裁決為該項投訴不成立；</p> <p>(iii) 如紀律委員會拒絕接納該等陳詞，紀律委員會主席須傳召答辯人陳述其案情；</p> <p>(d) 答辯人可親自或由其法律代表提出案情及援引證據以支持其案情；</p> <p>(e) 答辯人的案情陳述完畢後，答辯人或其法律代表可向紀律委員會作出結案陳詞。其後投訴人或其法律代表可向紀律委員會作出結案陳詞進行答覆。如投訴人或其法律代表如此陳詞，則答辯人可親自或由其法律代表向紀律委員會就投訴人的答覆作出進一步的陳詞。</p> |
| <p>10. Evidence</p> | <p>10. 證據</p> |
| <p>10.1 The rules of evidence do not apply to the proceedings of a hearing save where clearly and expressly stated as applicable.</p> | <p>10.1 證據規則不適用於任何聆訊程序。</p> |
| <p>10.2 Evidence may be taken by the Disciplinary Committee by oral statement on oath and the presiding member of the Disciplinary Committee may administer an oath.</p> | <p>10.2 紀律委員會可信納經過宣誓後的口頭陳述的證據，而紀律委員會主席可監誓。</p> |
| <p>10.3 Every witness shall be examined by the party calling him and may then be cross-examined by the other party and only upon matters arising out of the cross-examination may be re-examined by the party calling him.</p> | <p>10.3 每名證人將會被傳召其出席聆訊的一方主問及被對方盤問，此證人只能就盤問引起的事宜被傳召其出席聆訊的一方再度覆問。</p> |
| <p>10.4 The Disciplinary Committee may decline to admit the evidence of any deponent to a document who is not present for, or who declines to submit to cross-examination.</p> | <p>10.4 紀律委員會可拒絕接納沒有出席接受盤問或拒絕接受盤問的證人所作的文件宣誓證據。</p> |
| <p>10.5 At any stage during the hearing, the Disciplinary Committee may put such questions to the parties and the witnesses as the Disciplinary Committee thinks expedient.</p> | <p>10.5 只要紀律委員會認為合宜，紀律委員會可在聆訊的任何階段，向投訴及答辯雙方和證人提問。</p> |
| <p>10.6 The Disciplinary Committee may at the hearing admit or take into account any statement, document, information or matter whether or not it would be admissible in a court of law.</p> | <p>10.6 紀律委員會可於聆訊中接納或考慮任何證供、文件、資料或事宜，不論該等證供、文件、資料或事宜在法庭是否可被接納。</p> |

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| <p>11. Voting</p> <p>11.1 In the taking of votes of the Disciplinary Committee on any question to be determined by it, the presiding member of the Disciplinary Committee shall call upon the members, if any, to signify their votes by raising their right hands, and shall thereupon declare the determination of the Disciplinary Committee in respect of such question.</p> <p>11.2 Members of the Disciplinary Committee shall consider all evidence and findings and all relevant circumstances when casting their respective vote.</p> <p>11.3 Where the determination of the Disciplinary Committee so declared by the presiding member of the Disciplinary Committee is challenged by any member of the Disciplinary Committee, the presiding member of the Disciplinary Committee shall call upon each member severally to declare his vote, announce his own vote and announce the number of members of the Disciplinary Committee who have voted each way, and the result of the vote.</p> <p>11.4 No person other than members of the Disciplinary Committee, the legal practitioner appointed under rule 3.2 above and the Registrar may be present when the Disciplinary Committee votes on any matter related to disciplinary decision.</p> <p>12. Announcement of Decision</p> <p>12.1 The Disciplinary Committee shall consider and determine whether the facts alleged in any complaint before the Disciplinary Committee have been proved to its satisfaction and whether the Respondent of the hearing is guilty of the offence complained of.</p> <p>12.2 The Disciplinary Committee may announce its decision of whether the Respondent is guilty of the offence complained of immediately after the hearing or announce its decision in writing at a later date if the Disciplinary Committee so decides. The Disciplinary Committee will not and needs not to account for its decision in the announcement made under this rule.</p> <p>13. Mitigation to Disciplinary Committee</p> <p>13.1 After a hearing, if the Disciplinary Committee finds and announces that a disciplinary offence has been committed, it shall advise the Respondent of the procedures pertaining to mitigation before the Disciplinary Committee makes recommendation on disciplinary order(s).</p> | <p>11. 表決</p> <p>11.1 紀律委員會就交由其決定的任何問題進行投票時，紀律委員會主席須召喚委員舉起右手以明示其投票，並須隨即宣佈就該問題所作出的裁決。</p> <p>11.2 紀律委員會委員於投票時須考慮所有證據、裁斷及所有有關情況。</p> <p>11.3 當紀律委員會主席所宣佈的紀律委員會的裁決受到任何委員質疑時，紀律委員會主席可要求每一成員個別宣佈其投票，繼而宣佈其本身的投票及每一方獲紀律委員會委員投票的數目及表決結果。</p> <p>11.4 紀律委員會就任何有關紀律裁決的事項進行投票時，除紀律委員會委員及紀律程序規則第 3.2 條委任的法律執業者及註冊主任外，其他人均不得在場。</p> <p>12. 宣佈裁決</p> <p>12.1 紀律委員會須考慮及決定在其席前所提出的投訴中指稱的事實是否已證明至足以獲其信納和答辯人是否犯了投訴中所指控的違紀行為。</p> <p>12.2 紀律委員會可以在聆訊後即時宣佈裁決答辯人是否犯了投訴中所指控的違紀行為或決定在較後日期以書面形式宣佈裁決。紀律委員會在此宣佈中不會亦毋須說明裁決的理由。</p> <p>13. 向紀律委員會請求減輕判處</p> <p>13.1 在紀律聆訊後，若紀律委員會裁決並宣佈答辯人曾作出違紀行為，紀律委員會須於宣佈有關紀律制裁命令的建議前，向答辯人說明有關請求減輕判處的程序。</p> |
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| <p>13.2 If the Respondent chooses to mitigate, the Disciplinary Committee shall postpone its recommendation on disciplinary order(s) pending the hearing of the plea of mitigation by the Respondent.</p> <p>13.3 If the Respondent would like to submit any written submission and supporting documents on mitigation, he/she shall do so within five working days after the Disciplinary Committee announces its decision. Any application to the Disciplinary Committee for late submission of such written submission and supporting documents on mitigation shall be in writing with reasons to justify such delay.</p> <p>13.4 A mitigation hearing shall be fixed at a date the Disciplinary Committee sees fit for the Disciplinary Committee to hear the plea of mitigation by the Respondent. A notice of the mitigation hearing shall be sent to the Respondent not less than 14 days before the mitigation hearing. The mitigation hearing will, unless the Disciplinary Committee directs otherwise, be held in camera.</p> <p>13.5 After hearing the mitigation, the Disciplinary Committee shall announce its recommendation on disciplinary order(s) in accordance with sub-rule 12.2 hereof.</p> | <p>13.2 如答辯人選擇向紀律委員會請求減輕判處，紀律委員會須在聽取答辯人的減輕判處請求前，押後宣佈有關紀律制裁命令的建議。</p> <p>13.3 如答辯人要求呈交請求減輕判處的書面陳詞及文件證據，答辯人須於紀律委員會宣佈裁決後的五個工作天內，向紀律委員會呈交。任何要求延遲呈交請求減輕判處的書面陳詞及文件證據的申請須以書面的形式向紀律委員會提出，並附上延遲呈交的理由。</p> <p>13.4 紀律委員會須在其認為適當的日期安排減輕判處的聆訊，並在減輕判處的聆訊中聽取答辯人的減輕判處請求。減輕判處的聆訊的通知須於聆訊日期的不少於 14 天前給予答辯人。除非紀律委員會另有指示，減輕判處的聆訊將以非公開的形式進行。</p> <p>13.5 紀律委員會在聽取答辯人的減輕判處的請求後，須根據紀律程序規則第 12.2 條的規定宣佈有關紀律制裁命令的建議。</p> |
| <p>14. Submission of Report to the Board</p> <p>14.1 After the Disciplinary Committee has reached a decision on the advice to be given to the Board as to whether the disciplinary offence complained of has been committed and any appropriate disciplinary order that it would recommend in respect of the complaint, it shall submit a report to the Board, in which the reasons for the decision shall be given.</p> <p>14.2 If the Disciplinary Committee recommends a disciplinary order of written reprimand to be made under section 30(1)(c) of the Ordinance, it may, if it considers it appropriate, set out in the report to the Board its recommendation as to the duration of keeping the record of such a reprimand on the Register of registered social workers.</p> <p>14.3 The report prepared shall be dispatched under confidential cover to Board members before the Board meeting in which the report is to be presented.</p> <p>14.4 The presiding member of the Disciplinary Committee (or in case of his/her non-availability another member of the Committee so appointed) would orally present the report in the Board meeting.</p> | <p>14. 向註冊局提交報告</p> <p>14.1 在紀律委員會就其向註冊局提交有關答辯人曾否作出違紀行為的意見，並就委員會對該投訴作出任何適當的紀律制裁命令的建議達成裁決後，該委員會須據此向註冊局提交報告，並須於此說明其裁決的理由。</p> <p>14.2 若紀律委員會向註冊局建議根據《條例》第 30(1)(c)條發出書面譴責的紀律制裁命令，如該委員會認為適當，可在其報告中建議該書面譴責記錄存留在註冊社會工作者註冊紀錄冊上的期限。</p> <p>14.3 報告於備妥後須以機密文件方式於註冊局會議前送交所有註冊局成員。</p> <p>14.4 紀律委員會主席（若他不能出席時，由另一位獲委任的委員會成員）將出席註冊局會議呈交該報告。</p> |

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| <p>14.5 The minimum number of members at any meeting of the Board to consider a disciplinary case is ten.</p> <p>14.6 If the Board decides to make a disciplinary order of written reprimand under section 30(1)(c) of the Ordinance, it shall order the Registrar to record the reprimand on the Register of registered social workers with or without prescribing the duration of keeping such a record on the Register. In the absence of such prescription, the record shall be kept on the Register indefinitely (subject to any further order made by the Board in future upon the application of the Respondent of the hearing or on its own motion).</p> <p>15. Notification of Decision and Disciplinary Order</p> <p>15.1 After the Board has decided that a disciplinary offence has been committed, the Registrar shall notify the same and the reasons for the decision to the parties of the hearing.</p> <p>15.2 The Board shall consider and determine whether or not to postpone the announcement of disciplinary order under section 30 of the Ordinance.</p> <p>15.3 If the Board decides to postpone the announcement of disciplinary orders, the same stands postponed until such future meeting of the Board as the Board may decide. The parties of the hearing would be notified by the Registrar.</p> <p>16. Submission of Fresh Grounds of Mitigation to the Board</p> <p>16.1 After a Disciplinary Committee has announced its recommendation on disciplinary order(s), if there exist fresh grounds of mitigation which have not earlier been submitted to the Disciplinary Committee under rule 13 above, the Respondent can submit such grounds to the Board within five working days after the Disciplinary Committee has announced its recommendation on disciplinary order(s).</p> <p>16.2 The Respondent shall provide reasons as to why such fresh grounds of mitigation have not earlier been submitted to the Disciplinary Committee under rule 13 above.</p> <p>16.3 The Board shall consider such fresh grounds of mitigation of the Respondent before it decides on disciplinary order(s) and the Board shall announce the decision in such manner as it thinks fit.</p> <p><i>(English version prevails over Chinese version if there is any discrepancy.)</i></p> | <p>14.5 最少須有十名成員出席註冊局會議以考慮紀律制裁案。</p> <p>14.6 若註冊局決定根據《條例》第 30(1)(c)條作出書面譴責的紀律制裁命令，註冊局須命令註冊主任在註冊紀錄冊內記錄該書面譴責，並訂明或不訂明存留該記錄在註冊紀錄冊上的期限。若註冊局未有訂明期限，除在將來註冊局在答辯人申請下或由註冊局主動發出進一步的命令外，該記錄須永久登載於註冊紀錄冊內。</p> <p>15. 通知裁決及紀律制裁命令</p> <p>15.1 當註冊局議決答辯人犯有被指控的違紀行為後，註冊主任須通知投訴及答辯雙方有關決定及裁決的理由。</p> <p>15.2 註冊局須考慮及決定是否延遲宣佈根據《條例》第 30 條頒發的紀律制裁命令。</p> <p>15.3 如註冊局決定延遲宣佈該紀律制裁命令，該命令將推延至註冊局日後舉行的會議，註冊主任須就此決定通知投訴及答辯雙方。</p> <p>16. 向註冊局呈交有關請求減輕判處的新理據</p> <p>16.1 紀律委員會宣佈有關紀律制裁命令的建議後，如答辯人對請求減輕判處有新的理據，又此等理據從未曾根據程序規則第 13 條呈交紀律委員會，答辯人可於紀律委員會宣佈有關紀律制裁命令的建議後五個工作天內，向註冊局呈交該等理據。</p> <p>16.2 答辯人須向註冊局解釋為何該等請求減輕判處的新理據未有根據程序規則第 13 條於較早前呈交紀律委員會。</p> <p>16.3 註冊局在就紀律制裁命令作出決定前，須考慮該等請求減輕判處的新理據，及註冊局須以註冊局認為適當的方式宣佈該決定。</p> <p><i>(如中文譯本與英文原文有差異時，以英文原文為準。)</i></p> |
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