

## **Complaints & Discipline Policy**

**The Family Dispute Resolution Institute of Ontario (“FDRIO”)** is committed to the highest possible practice standards in family dispute resolution so that participants and the general public can have confidence in FDRIO’S members, their services and the field of dispute resolution in general. This complaint policy is intended to provide a process for the investigation and resolution of complaints about FDR Professionals which is transparent, efficient and fair. This policy applies to all FDRIO certified FDR Professionals, who are deemed to submit to this policy, by virtue of their membership.

**WHEREAS** the Family Dispute Resolution Institute of Ontario (“FDRIO”) is committed to the highest possible practice standards in family dispute resolution (FDR) so that participants, family professionals and the public can have confidence in FDRIO and its members, their services and the field of dispute resolution in general.

**THEREFORE** in accordance with the FDRIO Standards of Practice for FDR Professionals (“FDRIO Standards”), the FDRIO Board of Directors (“Board”) enacts as follows:

### **1. Purpose**

1.1 This Policy is intended to:  
affirm and uphold the FDRIO Standards and applicable policies in the interest of the public, the FDR profession and FDRIO members; and to ensure that all complaints and inquiries concerning FDRIO members holding an FDRP designation be dealt with according to a consistent standard and process.

### **2. The Committee**

2.1 The Board shall cause to be created a Professional Conduct Committee (“Committee”) and shall appoint members to the Committee. Appointments shall be made for three-year terms and may be renewed by the Board.

2.2 The Committee will be composed of at least three persons. All Committee members must be FDRIO members in good standing. Commencing January 1, 2019, at least one Committee member must be a FDRIO-Accredited FDR professional.

#### Committee Chair

2.3 The Board shall name one Committee member to be Chair of the Committee (“Committee Chair”). The Committee Chair shall not be a member of the Board.

### **3. Jurisdiction**

3.1 This Policy applies to FDRIO members who hold one or more FDRP designations (“Professionals”).

3.2 Any Complaint made under this policy must allege a breach by a Professional of the Standards, an applicable Policy or any Code of Conduct promulgated by the Board from time-to-time and in effect at the time of the alleged breach.

### **4. Making a Complaint**

4.1 All complaints concerning the conduct or capacity of a Professional shall be made in writing, by electronic mail at *complaints@fdrio.ca*; the address being advertised on the FDRIO website. Any electronic mail received at *complaints@fdrio.ca* shall be directed to the attention of the Committee Chair.

4.2 All complaints shall include the following information:

- a. The name and contact information of the person concerning whom the complaint or inquiry is made;
- b. The name and contact information of the person making the complaint or inquiry (“Complainant”); and
- c. A summary of the facts underlying any alleged breach of a Standard or Policy, including any documentary materials said to evidence the above.

#### Intake and Review

4.3 When a complaint is received by the Committee Chair, the Committee Chair shall determine if the person concerning whom the complaint or inquiry is made is a Professional subject to the jurisdiction of this Policy.

4.4 If the person concerning whom the complaint is made is not a Professional subject to the jurisdiction of this Policy, the complaint or inquiry shall be summarily dismissed for want of jurisdiction and the complainant promptly informed by electronic mail that FDRIO can take no action.

4.5 If the person concerning whom the complaint is made is a Professional subject to the jurisdiction of this Policy, the Committee Chair shall so inform the Chair of FDRIO. The Committee Chair shall then provide the Complainant with a copy of this Policy and with the FDRIO Waiver of Confidentiality and Exclusion of Liability (“Waiver and Exclusion”) document, in standard form, within 30 days of FDRIO’s receipt of the complaint or inquiry.

4.6 FDRIO shall take no further steps in any complaint, until an executed Waiver and Exclusion document is received from the Complainant by the Committee Chair.

## **5. Document Exchange and Committee Chair's Review**

5.1 When and if an executed Waiver and Exclusion document is received, the Committee Chair shall provide the Professional with the Complainant's executed Waiver and Exclusion document, the summary of the facts underlying any alleged breach of a Standard as contained in paragraph 4.2(c) of this Policy, and a copy of this Policy. The above materials are to be provided to the Professional within 15 days of the receipt of the executed Waiver and Exclusion Document. The Committee Chair shall also offer the Professional an opportunity to respond in writing, within 30 days, to the complaint. FDRIO shall take no further steps in any complaint during this 30-day response period.

5.2 If the Professional responds in writing to the complaint, the Committee Chair shall provide the Complainant with the Professional's response and invite the Complainant to provide any reply submissions within 15 days. FDRIO shall take no further steps in any complaint or inquiry during this 15-day reply period.

5.3 The document exchange period ends with the expiry of the 15-day reply period.

5.4 Within 30 days of the end of the document exchange Period as noted above at subsection 5.3, the Committee Chair shall Review the Complaint file, including all documents received from the Complainant and/or the Professional during the document exchange period, and make a Review Recommendation to the Chair, FDRIO

5.5 If, following his or her review of the Complaint file, the Committee Chair determines in her or his discretion that

- a. The Complaint arises solely out of an innocent communication error;
- b. The Complaint is frivolous, vexatious or actuated by malice; or
- c. It is plain and obvious that the complaint Cannot be upheld;

then the Committee Chair shall recommend, giving written reasons not to exceed 500 words, that the Complaint be summarily dismissed.

5.6 If, following his or her review of the Complaint file, the Committee Chair determines in her or his discretion that the Complaint does not fall within any of the categories in paragraphs 5.5(a)-(c) inclusive, then the Committee Chair shall recommend, without giving reasons, that the Chair, FDRIO appoint an Investigator.

5.7 If the Committee Chair's Review Recommendation is that the Complaint be summarily dismissed, the Chair, FDRIO may either, in his or her sole discretion;

- a. Summarily dismiss the Complaint; or
- b. Appoint an Investigator notwithstanding the Review Recommendation, by Notice of Appointment within 30 days of her or his receipt of the Review Recommendation.

5.8 If the Committee Chair's Review Recommendation is that the Chair, FDRIO appoint an Investigator, then the Chair, FDRIO shall do so, by Notice of Appointment within 30 days of her or his receipt of the Review Recommendation.

## **6. Investigations**

6.1 If the Chair of FDRIO issues a Notice of Appointment pursuant to paragraph 5.7(b) or subsection 5.8 of this Policy, an Investigator shall be appointed to obtain information concerning the complaint.

6.2 The Investigator shall be a FDRIO member in good standing, but need not be a Board member or a FDRIO member holding the same FDRP designation as the Professional.

6.3 The Committee Chair shall maintain a list of persons who have qualified to and have volunteered to perform the duty of Investigator, but provided that a person meet the requirements of subsection 6.2 of this Policy, he or she need not be on said list in order to act as Investigator.

6.4 Within 15 days of receipt of his or her Notice of Appointment, the Investigator shall provide each of the Complainant and the Professional with a copy of the Notice of Appointment, by electronic mail from the Investigator's ordinary professional address.

The Investigator shall advise each of the Complainant and the Professional that any requests for interviews will be granted.

### **Investigations Process: Interviews and Reports**

6.5 Should either of the Complainant or the Professional request an interview, these requests shall be granted and the Investigator shall interview both the Complainant and the Professional. These interviews may be conducted in person, by telephone or by other electronic means (computer videoconferencing etc.), but not by electronic mail or by text message.

6.6 Should neither the Complainant nor the Professional request an interview, the Investigator may, in his or her sole discretion, conduct interviews with any or all of the Complainant, the Professional or any alleged witness to the facts underlying the complaint. These interviews may be conducted in person, by telephone or by other electronic means (computer videoconferencing etc.), but not by electronic mail or by text message. Either of the Complainant or the Professional may refuse to be interviewed by the Investigator, and no adverse inference may be drawn against either of the Complainant or the Professional solely by reason of a refusal to be interviewed by the Investigator.

6.7 Once the interview process, if any, is completed, the Investigator shall provide a Report, in writing, to the Committee. The Report shall include a Recommended Disposition of the complaint. The Report shall be provided to the Committee within 120 days of the end of the document exchange period. Upon receipt of the Investigator's report, the Chair of the Committee shall forthwith provide the Professional with an unredacted copy of the Investigator's report by registered mail.

6.8 The Investigator's Recommended Disposition of a complaint or inquiry shall be one of the following:

- a. That the complaint or inquiry be dismissed;
- b. That the complaint or inquiry be upheld, in whole or in part and a written Caution be issued to the Professional with no other FDRIO action to be taken; or
- c. That the complaint or inquiry be upheld and the Committee convene to consider formal disciplinary consequences.

6.9 The Committee, by any means selected by the Committee Chair in his or her discretion, shall consider the Investigator's Report.

6.10 The Committee shall adopt the Investigator's Recommended Disposition as its Disposition of the complaint, unless the Committee votes unanimously not to adopt the Investigator's Recommended Disposition and to substitute a different Disposition.

6.11 Written reasons shall be given within 30 days, for any unanimous Committee decision not to adopt the Investigator's Recommended Disposition.

6.12 Under no circumstances may a Complainant or any person, save for the Professional, request a Hearing before the Committee.

## **7. Request for a Hearing**

7.1 If and only if the Investigator's Recommended Disposition contained within subsection 5.8 of this Policy is that the complaint be upheld and the Committee convene to consider formal disciplinary consequences, the Professional may request a Hearing before the Committee, by electronic mail to *complaints@fdrio.ca*. All Hearing requests shall be made within 15 days of Canada Post confirmation of the Professional's receipt of the Investigator's report. The Committee shall take no further action in respect of any complaint during this 15 day period

7.2 All Hearing requests received from a Professional which comply with the requirements of that paragraph, shall be granted and the Committee shall convene a Hearing within 60 days of the receipt of any such request.

7.3 The Hearing panel shall consist of three FDRIO members in good standing, selected by the Chair of the Committee and drawn from a list of volunteer qualified FDRIO members to be administered by the Committee.

7.4 The Chair of the Committee shall Chair all Hearings, unless the Chair of the Committee has previously declared a conflict of interest or the Chair of the Committee is incapacitated or otherwise unavailable. For further certainty, involvement in any pre-Hearing administrative steps as noted in this Policy with respect to the complaint does not cause a conflict of interest for the purpose of the complaint. If the Chair of the Committee is unable to Chair a Hearing for any reason, any other member of the Committee may act as Hearing Chair.

7.5 The hearing shall not be recorded in any manner.

7.6. No person, including the Investigator, may be called as a witness or otherwise required to attend to present evidence upon the Hearing. For further certainty, the Investigator's Report as filed constitutes the whole of the Investigator's evidence, including any Recommendation in that Report.

7.7 All of the following documents, and only the following documents, shall be placed before the hearing panel:

- a. The Notice of Complaint;
- b. Any communications received by the Investigator from the Professional and/or Complainant within the Document Exchange period contained herein and 5.4 this Policy; and
- c. The Investigator's Report.

7.8 For further certainty, no notes or memoranda made by the Investigator during the interviews process in the creation of the Investigator's Report are in any way discoverable or to be placed before the hearing panel.

7.9 At the Hearing, the Professional may make oral or written submissions, in person, though counsel or both. Written submissions must be typed and may not exceed 15 double-spaced pages in a 12-point font,

7.10 Oral or written submissions from the Professional may only be directed toward supplementing material found within the Investigator's Report, to advancing extenuating circumstances which, in the Professional's opinion, ought to mitigate or reduce an otherwise appropriate disciplinary sanction, or to both.

7.11 The Chair of the Hearing shall create a Memorandum of Oral Submissions from the Professional or on the Professional's behalf at the Hearing.

7.12 The Committee shall consider any written submissions from the Professional and any Memorandum of Oral Submissions from the Professional, together with the Investigator's report, in making any determinations.

## **8. Committee Dispositions and Disciplinary Consequences**

8.1 Should the Committee determine that the complaint or inquiry be dismissed, it shall be dismissed.

8.2 Should the Committee determine that the complaint or inquiry should be upheld, in whole or in part and a formal Caution be issued to the Professional with no further action to be taken, the Committee shall draft and send a written Caution to the Professional, containing whatever information the Committee shall deem appropriate and shall close the complaint file.

8.3 Should the Committee determine that the complaint, should be upheld in whole or in part and further determine that a formal Caution is insufficient to redress and consequence any breach of the Standards, Policies or Codes of Conduct, the Committee shall impose any of the following disciplinary consequences. For further certainty, the principles of progressive discipline shall always be considered by the Committee. The Committee may:

- a. Require the Professional to complete, at the Professional's own expense, an appropriate training course directed to issues raised in the complaint, with or without imposing an interim suspension of the Professional's FDRP designation pending completion of the course;
- b. Suspend the Professional's FDRP designation for a fixed term not to exceed one year;
- c. Suspend both the Professional's FDRP designation and FDRIO membership for a fixed term not to exceed one year;
- d. Permit the Professional to resign her or his FDRP designation and FDRIO membership;
- e. Revoke the Professional's FDRP's designation; or
- f. Revoke both the Professional's FDRP designation and FDRIO membership.

8.4 For further certainty, the disciplinary consequence of revocation of the Professional's FDRP designation and/or FDRIO membership, is an extraordinary consequence. Permanent revocation shall not be imposed unless:

- a. The Professional's conduct, capacity or performance was of such an egregiously low standard, that to permit the Professional to continue to hold a FDRP designation would bring FDRIO into public disrepute; or
- b. The Professional has a previous record of discipline under this Policy and the present complaint demonstrates to the Committee's satisfaction that the Professional is unwilling to comply with FDRIO direction.

## 9. Appeals

9.1 No appeal lies from a Committee disposition dismissing a complaint.

9.2 No appeal or review lies from a Committee disposition upholding a complaint or inquiry, in whole or in part and imposing a formal Caution with no further action taken.

9.3 A Professional may appeal from any other Committee disposition, by Notice of Appeal, in writing, directed to the Committee Chair, within 30 days of receipt of the Committee's Disposition.

9.4 Upon receipt of a Notice of Appeal, the Committee Chair shall provide the Chair, FDRIO with the Notice of Appeal, together with the Investigator's Report and Recommended Disposition and the Committee's Disposition, within 30 days.

9.5 The Chair, FDRIO shall consider the appeal on the written record only.

9.6 The Chair, FDRIO shall dismiss the appeal, unless:

- a. The Committee unanimously decided not to adopt the Investigator's Recommended Disposition and to substitute a different disposition; or
- b. The record discloses extraordinary circumstances or considerations which, in the opinion of the Chair, FDRIO, mitigate an otherwise-appropriate disciplinary consequence.

9.7 If the Committee unanimously decided not to adopt the Investigator's Recommended Disposition and to substitute a different disposition and, in the opinion of the Chair, FDRIO, the Committee ought not to have done so, the Committee Chair, FDRIO may allow the appeal and substitute the Investigator's Recommended Disposition, but only the Investigator's Recommended Disposition, for the Committee's Disposition.

9.8 If, in the opinion of the Chair, FDRIO, the record discloses extraordinary circumstances or considerations which mitigate an otherwise-appropriate disciplinary consequence, the Chair, FDRIO may allow the appeal and substitute any Disposition which would have been available to the Committee for the Committee's Disposition, save and except that the Chair, FDRIO may not substitute a Disposition dismissing the complaint.

9.9 The Chair, FDRIO shall provide a final and binding decision on the appeal, with written reasons, within 60 days of receipt of the Notice of Appeal and related documentation from the Committee Chair.

## **10. Conflicts of Interest**

10.1 No person shall act in any capacity in the complaint process if that person has or may have any conflict of interest or reasonable apprehension of conflict of interest with either the Complainant or the Professional.

10.2 Any FDRIO Board member may be temporarily appointed to the roles of the Committee Chair or the Chair, FDRIO, for the purpose of any complaint under this Policy, should either of the persons holding those positions declare a conflict of interest.

## **11. Relief from Strict Time Limitations**

11.1 The Chair, FDRIO or the Committee Chair as delegate may at any time relieve, in his or her sole discretion, either the Complainant or Professional from any of the time limits contained in this Policy.

## FDRIO Waiver of Confidentiality and Exclusion of Liability

**I, THE UNDERSIGNED**, have made a complaint against \_\_\_\_\_.

1. I have asked FDRIO to investigate my complaint, and if my complaint is found to have merit, to take appropriate steps to encourage and support the member in adhering to appropriate professional ethics, practices and procedures and to work to avoid such problems in the future.
2. In return for FDRIO undertaking to engage in this process, I unconditionally waive any right to use any document produced by FDRIO in any legal or other claim that I may choose to make against the member, and I will not under any circumstances summons any person appointed by FDRIO, or consulted by FDRIO during the course of this process, in any proceeding I may take against the member.
3. I unconditionally waive any rights that I may have to make a claim against FDRIO relating to the conduct of the member involved, or anyone appointed or consulted by FDRIO on the matter relating to FDRIO's investigation of the complaint; relating to FDRIO's recommendations; or relating to anything that FDRIO does or does not do arising out of the investigation of my complaint.
4. I understand that FDRIO is a voluntary organization and that it has no power to discipline a member for misconduct or inappropriate procedures apart for dealing with an ultimately revoking the person's membership in FDRIO.
5. I acknowledge and confirm that FDR processes are confidential in nature. I hereby waive any such confidentiality as pertaining to me, for purposes of investigating my complaint and I hereby expressly permit the person being complained about, to provide FDRIO with my complete file, including any and all notes, information, etc. I understand that FDRIO will protect and preserve any such information.
6. I acknowledge having received a copy of the FDRIO Complaint Process and that I have read it and understand it and agree to abide by its terms.

**Dated at:** \_\_\_\_\_, on \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Complainant