

THE LEGAL PRACTITIONERS (DISCIPLINARY PROCEEDINGS)
REGULATIONS, 1989
(Under section 27bis(2))

Date of commencement: 1st May, 1989.

Citation and commencement.

1. These Regulations may be cited as the Legal Practitioners (Disciplinary Proceedings) Regulations, 1989 and shall come into force on the 1st day of May, 1989.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

“Act” means the Legal Practitioners Act, 1964 as amended;

“Law Society” means the Law Society of Swaziland established by section 34 of the Act;

“practitioner” means a legal practitioner as defined in the Act;

“prosecutor” means the person or a Crown Counsel appointed by the Secretary under Regulation 10 to prosecute a complaint against a practitioner;

“Secretary” means the Secretary of the Law Society;

“taxing master” means the taxing master referred to in the High Court Rules, 1954;

“Tribunal” means the Disciplinary Tribunal established by section 27bis of the Act.

Composition of the Tribunal.

3. The Tribunal shall consist of a Chairman and two other members all of whom shall be appointed under section 27bis of the Act.

Functions of the Tribunal.

4. The Tribunal shall inquire into —

(a) any complaint regarding professional conduct of a practitioner referred to it by the Secretary whether such alleged conduct took place before or after the commencement of these Regulations;

(b) any complaint that a practitioner is incapable of practising as a legal practitioner on account of mental or physical disability referred to it by the Secretary whether such alleged incapacity arose before or after the commencement of these Regulations.

Powers of the Tribunal.

5. (1) Except as otherwise provided in these Regulations, the Chairman of the Tribunal shall determine the procedure for the conduct of an inquiry and the hearing of a complaint.

(2) The Tribunal shall have the same powers as a Judge of the High Court in respect of any act or omission which amounts to contempt of the Tribunal.

(3) The Tribunal may dispense with any requirements of these Regulations respecting notices, affidavits, documents, service or time, in any case where it appears to the Tribunal to be just to do so.

(4) The Tribunal may extend the time for doing any thing required to be done under these Regulations.

Form of complaints.

6. (1) A complaint shall be made in writing setting out in detail the acts or omissions complained of by the complainant.

(2) Without prejudice to sub-regulation (1), the Chairman of the Tribunal may, by notice which shall be as near as may be in accordance with Form 2 in the Schedule to these Regulations, require a complainant to verify his complaint by affidavit and to provide such further information and documents relating to the complaint as he thinks fit.

Manner of lodging complaints.

7. (1) A complaint shall be lodged with the Secretary who shall transmit it without delay to the Chairman of the Tribunal.

(2) A complaint once transmitted to the Chairman of the Tribunal shall not be withdrawn without leave of the Tribunal.

Preliminary proceedings.

8. (1) Where the Tribunal is of the opinion that a complaint does not disclose a *prima facie* case of professional misconduct or mental or physical disability, or where the complainant has neglected or refused to comply with the requirements of the Tribunal under these Regulations it may forthwith dismiss the complaint and notify the complainant accordingly.

(2) Where the Tribunal is of the opinion that a *prima facie* case of professional misconduct or mental or physical disability has been made out against the practitioner concerned it shall cause a copy of the complaint to be served on the practitioner.

(3) The Tribunal shall call upon the practitioner to furnish the Tribunal, within such time as it may direct, with a written explanation in answer to the complaint made against him.

(4) The Tribunal may, by notice which shall be as near as maybe in accordance with Form 3 in the Schedule to these Regulations, require the practitioner to verify his explanation by an affidavit.

(5) If upon consideration of the practitioner's explanation the Tribunal considers that further elucidation is required it may call upon the practitioner to appear before the Tribunal at such time and place as it may determine to provide such elucidation.

(6) If upon consideration of the complaint and the practitioner's explanation and his elucidation thereof, if any, and any report made to the Tribunal under sub-regulation (9), the

Tribunal is of the opinion that no *prima facie* case of professional misconduct or mental or physical disability has been made out against the practitioner it shall dismiss the complaint and notify the complainant and the practitioner accordingly.

(7) If upon consideration of the complaint and the practitioner's explanation and his elucidation thereof, if any, and any report made to the Tribunal under sub-regulation (9), the Tribunal is of the opinion that a *prima facie* case of professional misconduct or mental or physical disability has been made out against the practitioner it shall subject to sub-regulation (8), fix a day, time and place for the hearing of the complaint

(8) Where the practitioner admits that he is guilty of professional misconduct as alleged by the complainant or that he is incapable of practising as a legal practitioner on account of mental or physical disability he may request the Tribunal to deal with the matter summarily, and the Tribunal may in its discretion dispose of the matter summarily; otherwise it shall proceed to hear the complaint in accordance with the provisions of these Regulations.

(9) For purposes of determining whether a *prima facie* case of professional misconduct or mental or physical disability exists the Tribunal may appoint an accountant or other person to investigate and report on the practitioner's books of account or other documents, records or things relating to the practitioner's practice or former practice, or a medical practitioner to examine him and report on his mental or physical condition.

Notice of hearing.

9. (1) Where a day, time and place have been fixed by the Tribunal under Regulation 8(7) for the hearing of the complaint it shall give the practitioner, the complainant and the Secretary notice of hearing at least twenty-eight days before the day fixed for the hearing of the complaint.

(2) The notice shall be made as near as may be in accordance with Form 4 in the Schedule to these Regulations.

Appointment of prosecutor.

10. (1) The Secretary upon receipt of the notice of hearing shall appoint a member of the Law Society or a Crown Counsel to prosecute the complaint before the Tribunal, and the Law Society shall be responsible for his costs.

(2) The prosecutor shall within seven days of his appointment notify the Tribunal and the practitioner of his appointment as the prosecutor, and shall furnish the Tribunal and the practitioner with his postal address and the address of his place of business or employment or residence or a place designated by him for service of documents upon him.

(3) The Tribunal shall furnish the prosecutor with copies of the complaint, the practitioner's written explanation and recorded elucidation thereof, if any, and any report made to the Tribunal under Regulation 8(9) of these Regulations.

Discovery of documents.

11. (1) The practitioner and the prosecutor shall at least fourteen days before the day fixed for hearing furnish the Tribunal and each other with a list of documents on which each intends to rely and shall allow the other to inspect the documents set out in the list not less than seven days before the day fixed for hearing.

(2) The practitioner and prosecutor may by notice in writing given not less than nine days before the day fixed for hearing call upon the other to admit any document on which he intends to rely and if the other desires to challenge the authenticity of the document he shall within six days after service of such notice upon him give notice that he does not admit such document and that he requires it to be proved at the hearing.

(3) If the practitioner or the prosecutor refuses or neglects to give notice of non-admission within the time prescribed under sub-regulation (2) he shall be deemed to have admitted the document, unless otherwise ordered by the Tribunal.

(4) Where the practitioner or the prosecutor gives notice of non-admission within the time prescribed under sub-regulation (2) and the document is proved at the hearing, the costs of proving the document shall be paid by the person who challenged the authenticity of the document, whatever the order of the Tribunal may be, unless in its findings the Tribunal finds that there were reasonable grounds for non-admission of the authenticity of the document by the practitioner or the prosecutor as the case may be.

(5) Unless the Tribunal otherwise directs, where the practitioner or the prosecutor proves a document without having given a notice to admit under sub-regulation (2) no costs of proving the document shall be allowed on taxation, except if the omission to give notice to admit is in the opinion of the taxing master a saving of expense.

Hearing of complaints by Tribunal.

12 (1) The Tribunal shall conduct its hearing in private and shall permit the practitioner to be represented by another legal practitioner, if he so wishes.

(2) If either the prosecutor or the practitioner fails to appear at the hearing the Tribunal may, upon proof of service of the notice of hearing, proceed to hear and determine the complaint in his absence.

(3) The Tribunal shall be presided over by the Chairman sitting with two other members.

(4) The Chairman may delegate any of his functions under these Regulations to one of the members of the Tribunal.

(5) The prosecutor and the practitioner shall both be afforded the opportunity of adducing evidence relevant to the subject-matter of the inquiry, of cross-examining each other's witnesses and of making submissions to the Tribunal.

(6) All evidence given at any hearing before the Tribunal shall be on oath or affirmation to be administered by the Chairman of the Tribunal, or with leave of the Tribunal by affidavit evidence:

Provided that where such leave is given, the prosecutor or the practitioner, as the case may be, may require the attendance on subpoena of any deponent to any such affidavit for the purpose of giving oral evidence, unless the Tribunal is satisfied that the affidavit relates to formal matters only.

(7) The Tribunal may administer oaths, adjourn the hearing on such terms as to costs as it may think fit, permit amendments to be made and may cause a mechanical or shorthand record to be made of the proceedings of any matter before it.

(8) The Tribunal shall apply the same laws as to the admissibility of evidence and the competency, examination and cross-examination of witnesses as are applied by the High Court in a civil case.

Subpoena of witnesses.

13. (1) The Tribunal may at any stage subpoena any person as a witness or examine any person in attendance at the hearing though not subpoenaed as a witness, or may recall and re-examine any person already examined.

(2) If the prosecutor or the practitioner desires the attendance of any person to give evidence at the hearing he may apply to the Tribunal and the Chairman of the Tribunal shall issue one or more subpoenas for that purpose, and service shall be effected personally on the person named in the subpoena.

(3) If a witness has in his possession or control any deed, instrument, writing or thing which the person requiring his attendance desires to be produced in evidence the subpoena shall specify such documents or thing and require to produce it to the Tribunal at the hearing.

(4) The person applying for a subpoena under sub-regulation (2) shall be responsible for effecting service of the subpoena and for its costs, and shall tender to the person subpoenaed a reasonable sum of money in respect of travelling expenses and subsistence.

(5) A subpoena issued under these Regulations shall be in Form 5 in the Schedule to these Regulations.

Service of notices, documents, etc.

14. The service of any notice or document under these Regulations may be effected —

- (a) by delivering a copy thereof to the person to be served personally;
- (b) in the case of the practitioner, by leaving a copy thereof at his place of residence or business with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age;
- (c) in the case of the prosecutor, by leaving a copy thereof at his place of business or employment or residence or at a place designated by him for service, furnished by him under Regulation 10, with the person apparently in charge of the premises or place at the time of delivery, being a person apparently not less than sixteen years of age;
- (d) in the case of the Tribunal, by leaving a copy thereof at the place of business of the Chairman with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age;
- (e) by registered letter addressed, in the case of the practitioner, to his last known postal address, in the case of the prosecutor to the postal address furnished by him under Regulation 10 and, in the case of the Tribunal, to the postal address of the Chairman.

Delegation of functions of Secretary.

15. Where the Secretary is the subject of a complaint transmitted to the Tribunal the duty imposed on him under these Regulation shall be performed by the Vice-President of the Law Society.

Decisions of the Tribunal.

16. (1) Decisions of the Tribunal shall be by a majority of the members.

(2) At the conclusion of the hearing of a complaint, the Tribunal may reserve its decision or announce it forthwith, and the decision shall be pronounced in public.

(3) The decision of the Tribunal shall be recorded in a document signed by the Chairman, and shall be notified to the Attorney-General, the Registrar of the High Court, the Secretary and the practitioner within fourteen days after the decision of the Tribunal has been announced.

(4) Where the Tribunal decides to suspend the practitioner under section 27ter(b)(ii) of the Act from practising as a legal practitioner, its decision shall be published as soon as possible in the Government Gazette.

(5) Where the practitioner is found guilty of professional misconduct or where no such finding is made but the Tribunal nevertheless thinks fit having regard to the practitioner's conduct and to all the circumstances of the case that such an order should be made, the Tribunal may order him to pay the costs of the proceedings, and such costs shall be calculated in accordance with the High Court tariff applicable to civil litigation and shall be taxable in like manner as an order for costs made by the High Court.

(6) Without derogating from the generality of any such order made under sub-regulation (6), such costs shall include —

- (a) the costs of the prosecutor;
- (b) the costs of recording, transcribing and preparing copies of any record of proceedings;
- (c) the costs of an accountant, medical practitioner or other person appointed by the Tribunal under Regulation 8(9); and
- (d) the costs of procuring the attendance of witnesses and their witness fees including those of the complainant.

Effect of award of costs.

17. An award of costs shall have the effect of a civil debt due to the Law Society and may be enforced as such by the Secretary.

Copies of or extracts from record of proceedings.

18. The practitioner shall, upon his request and with the consent of the Chairman of the Tribunal, be furnished by the Tribunal with a copy of the record of proceedings of the hearing or extracts therefrom upon payment by him of the costs of the making thereof.

Retention and disposal of exhibits.

19. The Tribunal may order that all books, papers or other exhibits produced or used at a hearing be retained by the Tribunal until after the expiration of the time prescribed under section 27quat of the Act for an appeal against a decision of the Tribunal, and if notice of appeal is given, until the appeal is heard or otherwise disposed of.

SCHEDULE

FORM 1

**FORM OF AFFIDAVIT BY COMPLAINANT
VERIFYING HIS COMPLAINT**

In the matter of C.D., a Legal Practitioner,

and

In the Matter of the Legal Practitioners Act, 1964

I, A.B. of

, make oath and say as follows:

I verify the truth of the allegations made by me concerning C.D. in the complaint lodged with the Secretary to the Law Society on 19 _____, a copy of which is annexed hereto. Sworn, etc.

FORM 2

FORM OF NOTICE TO COMPLAINANT BY THE DISCIPLINARY TRIBUNAL CALLING FOR FURTHER INFORMATION AND/OR DOCUMENTS

In the Matter of C.D., a Legal Practitioner,
and

In the Matter of the Legal Practitioners Act, 1964

To A.B., of

Your complaint regarding C.D., a legal practitioner, has been received by the Disciplinary Tribunal constituted under section 27*bis* of the Legal Practitioners Act, 1964.

*You are hereby required to verify your complaint by affidavit and to deliver your affidavit to the Chairman of the Tribunal at

not later than

19 _____ Form 1 setting out the appropriate form of affidavit is enclosed with this notice together with a copy of your complaint.

*You are hereby required to furnish the Tribunal with the following information, namely and such information is to be delivered to the Chairman of the Tribunal

at _____ not later than _____

*You are hereby required to furnish the Tribunal with the following documents, namely and such documents are to be delivered to the Chairman of the Tribunal at

not later than _____ 19 _____

DATED at _____ this _____ day of _____ 19 _____

The Tribunal's address for service is:

CHAIRMAN OF THE TRIBUNAL

N.B. Failure to comply with this notice may result in your complaint being summarily dismissed

*Delete if not required.

FORM 3

FORM OF NOTICE TO LEGAL PRACTITIONER BY THE DISCIPLINARY TRIBUNAL CALLING FOR AN EXPLANATION IN ANSWER TO A COMPLAINT

In the Matter of C.D., a Legal Practitioner,
and

In the Matter of the Legal Practitioners Act, 1964.

To C.D., of

A complaint has been made by A.B., of

, to
the Disciplinary Tribunal constituted under section 27bis of the Legal Practitioners Act, 1964,
a copy of which accompanies this notice.

You are hereby required to furnish the Tribunal not later than

19 with a written explanation in answer to the complaint.

You are further required to verify your explanation by affidavit.*

You are requested to acknowledge the receipt of this notice without delay.

DATED at this day of 19

The Tribunal's address for service is:

CHAIRMAN OF THE TRIBUNAL

*Delete if not required

FORM 4

**FORM OF NOTICE TO LEGAL PRACTITIONER AND SECRETARY
TO THE LAW SOCIETY BY THE DISCIPLINARY TRIBUNAL
APPOINTING A DAY FOR HEARING OF A COMPLAINT**

In the Matter of C.D., a Legal Practitioner,

and

In the Matter of the Legal Practitioners Act, 1964

To A.B., of

Legal Practitioner

C.D., of

Complainant

The Secretary of the Law Society.

The day of , 19 , is the day fixed by the Tribunal constituted under the
Legal Practitioners Act, 1964 for the hearing of the complaint of A.B. in the matter of C.D., a
Legal Practitioner.

The Tribunal will sit at at o'clock in the noon.

The Secretary to the Law Society is required to appoint a member of the Law Society or a
Crown Counsel to prosecute the complaint, to furnish him with a copy of this notice and to
notify the Chairman of the Tribunal of the name and address of such person.

The Prosecutor is required to notify the Tribunal and C.D. of his appointment within seven
days of the appointment being made and to furnish the Tribunal and C.D. with a postal and an
address of the place of business, employment or residence or a designated place for service of
documents on him.

C.D. and the prosecutor are required by the Legal Practitioners (Disciplinary Proceedings)
Regulations, 1989 to furnish the Tribunal and each other at least fourteen days before the said
day of 19 , with a list of all documents on which they intend to rely.

C.D. and the prosecutor may inspect the documents included in the list furnished by the other.

If either C.D. or the prosecutor shall fail to appear and the Tribunal decides to proceed in his absence, the party appearing must be prepared to prove service, in accordance with the Legal Practitioners (Disciplinary Proceedings) Regulations, 1989, of the list of documents and any other notice or correspondence.

You are requested to acknowledge receipt of this notice without delay.

DATED at _____ this _____ day of _____ 19

The Tribunal's address for service is:

CHAIRMAN OF THE TRIBUNAL

FORM 5

FORM OF SUBPOENA

In the Matter of C.D., a Legal Practitioner,

and

In the Matter of the Legal Practitioners Act, 1964

To:

You are hereby required to attend before the Disciplinary Tribunal constituted under the Legal Practitioners Act, 1964 at

on day, the day of
at the hour of in the ... noon, and so from day to day until the hearing of the above matter is heard, to give evidence on behalf of

And you are further required to bring with you and produce to the Tribunal

.....
.....
.....
(specify documents or things to be produced)

DATED at _____ this _____ day of _____ 19

CHAIRMAN OF THE TRIBUNAL

N.B. Failure to appear before the Tribunal in obedience to a Subpoena issued by the Tribunal shall amount to contempt of the Tribunal.

CHIEF JUSTICE

MBABANE.

17th November, 1989.