

BERMUDA STATUTORY INSTRUMENT

BR 56/1997

BAR PROFESSIONAL CONDUCT COMMITTEE RULES 1997

*[made under section 9(1)(c) of the Bermuda Bar Act 1974 [title 30 item 3]
and brought into operation on 12 September 1997]*

ARRANGEMENT OF RULES

- 1 Citation
- 2 Application and interpretation
- 3 Preliminary inquiry into complaints
- 4 Dismissal of non-meritorious complaints after preliminary inquiry
- 5 Investigation of meritorious complaints
- 6 Dismissal of meritorious complaint after investigation
- 7 Informal treatment of complaint disclosing prima facie case
- 8 Formal treatment of complaint disclosing prima facie case
- 9 Complainant to be kept informed of progress of investigation of complaint
- 10 Chief Justice to be informed of result of investigation
- 11 Formulation of disciplinary charges
- 12 Transmission of disciplinary charges to Chief Justice
- 13 Chief Justice to transmit disciplinary charges and Convening Notice to respondent
- 14 Transmission of documents to respondent
- 15 Objection to member of disciplinary tribunal by respondent
- 16 Transmission of Convening Notice to Committee and disciplinary tribunal
- 17 Imposition of conditions on person complained against pending appeal

Citation

- 1 These Rules may be cited as the Professional Conduct Committee Rules 1997.

BAR PROFESSIONAL CONDUCT COMMITTEE RULES 1997

Application and interpretation

2 (1) These Rules shall have effect in relation to the Professional Conduct Committee appointed by the Bar Council under section 18 of the Act.

(2) In these Rules, unless the context otherwise requires —

"the Act" means the Bermuda Bar Act 1974 [*title 30 item 3*];

"Committee" means the Professional Conduct Committee established under section 18 of the Act;

"committee representative" means a member of the Committee appointed under section 18 of the Act;

"respondent" means a barrister, professional company or registered associate against whom a complaint of improper conduct has been made under section 21 of the Act.

(3) In their application to professional companies, these Rules shall be read with any grammatical changes that may be necessary.

[Rule 2 amended by 2009:29 s.19 effective 19 October 2009]

Preliminary inquiry into complaints

3 (1) Where the Bar Council refers a complaint of improper conduct to the Committee, the Committee shall—

(a) give notice in writing to a respondent of receipt of such complaint; and

(b) sit to make such initial inquiries as appear to the Committee to be necessary to enable the Committee to perform the functions assigned to it under paragraph (4) of this rule.

(2) The Committee shall sit in such place and at such time as the Chairman of the Committee may direct.

(3) A complainant and a respondent shall be parties to any inquiry or investigation of a complaint of improper conduct.

(4) After making initial inquiries under paragraph (1) of this rule, the Committee shall conduct a preliminary inquiry to determine whether—

(a) a complaint is trivial, frivolous or lacking in merit; or

(b) a complaint has some merit; and

- (c) where it is determined that a complaint has some merit, the Committee shall investigate the complaint in accordance with rule 5.

Dismissal of non-meritorious complaints after preliminary inquiry

4 Where, after conducting a preliminary inquiry into a complaint, the Committee determines that the complaint is trivial, frivolous or lacking in merit, the Committee may dismiss the complaint summarily without further inquiry or investigation, and the Committee shall inform the parties in writing of any such dismissal.

Investigation of meritorious complaints

5 (1) Where the Committee determines that there is some merit to a complaint of improper conduct, the Chairman shall write to a respondent in such terms as the Committee may from time to time specify to inform him that—

- (a) the Bar Council has received a complaint which may constitute improper conduct by him in the terms specified in the letter;
- (b) the Bar Council has referred the complaint to the Committee for investigation by it; and
- (c) within 14 days of the delivery of the letter from the Chairman to him personally or his place of business, he may comment upon the contents of the letter in writing or in person,

so however, that where the respondent is the one who has reported the complaint, the Chairman may dispense with the measures in this paragraph.

(2) Where a respondent replies to the Chairman's letter within 14 days of the date of its delivery to him, the Committee shall, as soon as is practicable thereafter, investigate the complaint in the light of all the material available to it, including the respondent's reply, to determine whether a *prima facie* case of improper conduct is made out on the evidence before it.

(3) Where a respondent does not reply to the Chairman's letter within 14 days of the date of its delivery to him, the Committee may proceed to investigate the complaint in his absence as if he has denied the substance and merit of the complaint in its entirety.

(4) Where the Committee commences an investigation of a complaint and is unable to make a *prima facie* determination on the facts

BAR PROFESSIONAL CONDUCT COMMITTEE RULES 1997

before it, the Committee may defer further investigation of the complaint until it has conducted further inquiries.

Dismissal of meritorious complaint after investigation

6 After investigating a complaint in accordance with rule 5, the Committee may, if it deems appropriate so to do, dismiss the complaint summarily if it is satisfied that no *prima facie* case has been made out against a respondent.

Informal treatment of complaint disclosing prima facie case

7 (1) Where a *prima facie* case of improper conduct is disclosed by the complaint but, in the opinion of the Committee, the complaint requires informal treatment the Committee may—

- (a) advise a respondent in writing or orally in respect of his future conduct; or
- (b) direct that a respondent shall appear before the Chairman of the Committee or some other person nominated by the Committee for that purpose, to provide an explanation for his conduct; and
- (c) where the respondent consents, admonish him in writing or orally if the Committee is not satisfied with his explanation.

(2) If a respondent does not consent to an admonishment under sub-paragraph (c) of paragraph (1) of this rule, the Committee may deal with the complaint on a formal basis in accordance with rule 8.

Formal treatment of complaint disclosing prima facie case

8 Where a *prima facie* case of improper conduct is disclosed by a complaint, and in the opinion of the Committee the complaint requires formal treatment, the Committee—

- (a) may direct that the complaint should form the subject-matter of a charge before a disciplinary tribunal; and
- (b) shall cause such charge to be formulated.

Complainant to be kept informed of progress of investigation of complaint

9 The Chairman shall take such steps as are reasonably practicable to inform the complainant of the progress and result of an investigation into the complaint made against him.

Chief Justice to be informed of result of investigation

10 The Chairman of the Committee shall inform the Bar Council and the Chief Justice in writing of the results of its inquiry into or investigation of or both such inquiry into and investigation of a complaint of improper conduct.

Formulation of disciplinary charges

11 (1) A committee representative may himself formulate a charge in respect of a complaint of improper conduct and present a case before a disciplinary tribunal, or he may arrange for the appointment of such other counsel as may be necessary and expedient so to do for the proper presentation of a complaint.

(2) A committee representative or counsel appointed by him may only formulate such charge which is founded upon the same facts or evidence from which the complaint arose.

Transmission of disciplinary charges to Chief Justice

12 (1) Upon the formulation of a charge by a committee representative or counsel appointed by him, a committee representative shall cause a copy of the charge to be transmitted to the Chief Justice.

(2) A committee representative shall, as soon as practicable after he causes copies of a charge to be supplied to the Chief Justice, invite the Chief Justice to exercise his power under section 19 of the Act to—

- (a) appoint a disciplinary tribunal to hear and determine the charge;
- (b) appoint a clerk thereto; and
- (c) fix a date for a preliminary hearing before the tribunal in respect of the complaint of improper conduct.

Chief Justice to transmit disciplinary charges and Convening Notice to respondent

13 (1) Within 14 days of receipt of such charge from the Committee the Chief Justice shall—

- (a) appoint a disciplinary tribunal constituted in accordance with section 19 of the Act; and
- (b) where the Bar Council is not the complainant, invite the Bar Council to forward to him forthwith in writing the names of the members recommended by them for appointment in accordance with section 19 of the Act;

BAR PROFESSIONAL CONDUCT COMMITTEE RULES 1997

- (c) cause to be served on the respondent a copy of—
 - (i) the Rules;
 - (ii) the Convening Notice informing him about the matters and rights in paragraphs (2) and (3) of this rule.
- (2) The matters referred to in paragraph (1) of this rule about which the person complained against must be informed are—
 - (a) that a disciplinary tribunal has been appointed for the purpose of hearing the complaint to determine whether or not the complaint constitutes improper conduct by him;
 - (b) that the tribunal may proceed to conduct a preliminary inquiry and determine the complaint in his absence if he does not appear or send counsel to appear on his behalf in pursuance of sub-paragraph (g) of this paragraph of this rule;
 - (c) the names of the members of the disciplinary tribunal;
 - (d) the name of the clerk to the disciplinary tribunal;
 - (e) the name of any witnesses which counsel for the Bar Council intends to call to give evidence and any witness statements made by them;
 - (f) a list of the documents upon which that counsel intends to rely at the hearing;
 - (g) the date fixed for the preliminary hearing, and the time when and place where such a hearing will be held.
- (3) The rights referred to in paragraph (1) of this rule are the right of the person complained against to—
 - (a) object, in accordance with rule 15, to the appointment of one or more members of the disciplinary tribunal;
 - (b) represent himself or be represented by counsel before a disciplinary tribunal;
 - (c) deliver a written answer to a charge if he thinks fit, without prejudice to his right to appear and take part in disciplinary proceedings; and
 - (d) ask a disciplinary tribunal to direct that he shall be permitted to inspect, request and take copies of any documents referred to in the list of documents in the Convening Notice served on him.

Transmission of documents to respondent

14 A committee representative shall, as soon as practicable after the issue by the Chief Justice of a Convening Notice and its service on a respondent or in any event not later than 10 days before the date of a preliminary hearing, serve on the respondent—

- (a) a copy of the statement of the evidence of each witness counsel intends to call in support of a charge made against him; and
- (b) a complete list of the documents upon which counsel intends to rely.

Objection to member of disciplinary tribunal by respondent

15 (1) A respondent may, upon receipt of a Convening Notice served on him under section 22 of the Act, and subject to paragraph (4) of this rule, make an objection in writing to the Chief Justice to the appointment of one or more of the members of the disciplinary tribunal named in the Convening Notice, and in so doing the respondent shall specify the ground for any such objection.

(2) Upon receipt of an objection in writing from a respondent the Chief Justice shall, if he is satisfied that the objection is properly made, revoke the appointment of the member of the disciplinary tribunal whose appointment the respondent has objected to, appoint another person to serve on the disciplinary tribunal in that person's place and notify the respondent of such appointment and the name of the member of the tribunal so appointed.

(3) Subject to paragraph 4 of this rule, where a respondent receives from the Chief Justice the name of the new member or members of a disciplinary tribunal, the respondent shall have *mutatis mutandis* in relation to any new member so appointed the right to object to that appointment in accordance with paragraph (1) of this rule.

(4) No objection to the appointment of any member of a disciplinary tribunal shall be upheld solely on the ground that the member appointed thereto has or may have knowledge of a previous charge of improper conduct or breach of proper professional standards against the respondent or any finding in respect of any such charge, or of any sentence imposed on the respondent.

Transmission of Convening Notice to Committee and disciplinary tribunal

16 (1) As soon as practicable after he appoints a disciplinary tribunal and a clerk thereto, the Chief Justice shall cause a copy of the Convening Notice to be forwarded to the Committee to inform the

BAR PROFESSIONAL CONDUCT COMMITTEE RULES 1997

Committee of the names of the persons who will constitute the disciplinary tribunal which will hear the case that is the subject-matter of a charge transmitted to him by the Committee.

(2) Not more than 28 days after the Committee receives a copy of a Convening Notice containing the names of the persons who will constitute a disciplinary tribunal and the name of the clerk thereto, the committee representative shall—

- (a) cause a copy of the charge, Convening Notice and the Rules to be transmitted to each member of the disciplinary tribunal; and
- (b) inform the members of the disciplinary tribunal and clerk thereto of the day fixed for a preliminary hearing in respect of a complaint of improper conduct.

(3) A committee representative shall make—

- (a) the necessary administrative arrangements for the summoning of witnesses;
- (b) the necessary administrative arrangements for the production of documents; and
- (c) any other necessary arrangements,

for the proper presentation of a complaint of improper conduct before a disciplinary tribunal.

Imposition of conditions on person complained against pending appeal

17 Where, after determination of a charge against a respondent, the respondent files a Notice of Appeal against such determination and a disciplinary tribunal has deferred the coming into operation of his sentence under rule 21 of the Bar Disciplinary Tribunal Rules 1997 [*title 30 item 3(h)*] pending the outcome of his appeal, the Committee may make a recommendation to the tribunal for terms to be imposed on such a respondent in respect of his conduct pending the hearing of his appeal.

[Amended by:

2009 : 29]