
16. Solicitors Disciplinary Tribunal Proceedings Rules

ARRANGEMENT OF RULES

Rule

PART I INTERPRETATION

1. [Repealed]
2. Interpretation

PART II APPLICATIONS AGAINST SOLICITORS, SOLICITORS' EMPLOYEES AND TRAINEE SOLICITORS

3. Applications to Society to consider complaints
4. Transmission of documents
5. Further information
6. Dismissal without answer by respondent
7. Parties
8. Notice of date of hearing
9. Forms of notice
10. Inspection of documents
11. Failure to appear
12. Representation
13. Re-hearing after failure to appear
14. Evidence
15. Findings and order
16. Suspension of order pending appeal
17. Service of findings and order

PART III [Repealed]

**PART IV
GENERAL**

25. Reference to Council of Society
26. Withdrawal of proceedings
27. Adjournments
28. Order of hearing proceedings
29. Amending and additional affidavits
30. Shorthand notes
31. Service
32. Power of Solicitors Disciplinary Tribunal to dispense with requirements of rules
33. Extension or abridgement of time
34. Retention of documents pending appeal
35. Evidence
36. Admission
37. Summons

Schedule Forms

PART I

INTERPRETATION

1. (Repealed)

2. **Interpretation**

In these rules, unless the context otherwise requires-

"affidavit" includes affirmation;

"clerk" means the clerk to the Solicitors Disciplinary Tribunal or any deputy or person appointed by the Solicitors Disciplinary Tribunal temporarily to perform the duties of that office;

"respondent" means any solicitor, trainee solicitor, employee of a solicitor, foreign lawyer or employee of a foreign lawyer against whom an application is made pursuant to rule 3;

"Secretary General" means the Secretary General of the Society.

PART II

**APPLICATIONS AGAINST SOLICITORS, SOLICITORS' EMPLOYEES
AND TRAINEE SOLICITORS**

3. Applications to Society to consider complaints

- (1) An application to consider a complaint regarding the conduct of a respondent shall be in writing and signed by the applicant in Form 1 in the Schedule and shall be sent to the Society together with an affidavit by the applicant in Form 2 stating the matters of fact on which he relies in support of his application.
- (2) Where the application is made by the Society the application may be signed and the affidavit sworn on behalf of the Society by the Secretary General or by such other person as may from time to time be appointed by the Council.

4. Transmission of documents

If the Council or the Chief Judge decides to submit a matter under section 9A of the Ordinance to the Tribunal Convenor of the Solicitors Disciplinary Tribunal appointed pursuant to section 9(4) of the Ordinance, the Council shall transmit to the Tribunal Convenor all documents received by the Society pursuant to rule 3(1) or any application and affidavit signed and sworn pursuant to rule 3(2).

5. Further information

The Solicitors Disciplinary Tribunal may at any time require the applicant or the Council to supply such further information and documents in his or its possession or under his or its control relating to the application as they think fit.

6. Dismissal without answer by respondent

- (1) If upon consideration of any such documents transmitted to the Solicitors Disciplinary Tribunal under rule 4, the Solicitors Disciplinary Tribunal is of the opinion that no *prima facie* case is shown for any disciplinary action, the Solicitors Disciplinary Tribunal may dismiss the application without requiring the respondent to answer the allegations, and without hearing the applicant.
- (2) If required so to do either by the applicant, the Society or the respondent, the Solicitors Disciplinary Tribunal shall make a formal order dismissing such application and, the clerk shall file the order pursuant to section 10(3) and section 12(2) of the Ordinance.

7. Parties

In the case of an application under rule 3(1), the applicant and the respondent shall be parties, and in the case of an application under rule 3(2), the Society and the respondent shall be parties.

8. Notice of date of hearing

- (1) Where an application is made pursuant to rule 3 and in the opinion of the Solicitors Disciplinary Tribunal, a prima facie case is shown against the respondent, the Solicitors Disciplinary Tribunal shall fix a day for the hearing and the clerk shall serve notice thereof on each party to the proceedings and shall in every case serve on the respondent a copy of the affidavit and a copy of the application.
- (2) There shall be such period of not less than 21 days between the service of any such notice and the day fixed therein for the hearing as the Solicitors Disciplinary Tribunal may direct.

9. Forms of notice

A notice under rule 8 shall be in Form 3 or Form 4 in the Schedule, as shall be appropriate, and shall require the party to whom it is addressed to furnish to the clerk and to every other party at least 14 days before the day fixed for the hearing, unless the Solicitors Disciplinary Tribunal direct otherwise, a list of all documents on which he intends to rely.

10. Inspection of documents

- (1) Any party may inspect the documents included in the list furnished by any other party.
- (2) A copy of any document mentioned in the list furnished by any party which is or has been in his possession or power shall, on application by the party requiring it, be furnished to that party by the other, within 7 days after the receipt of such application.

11. Failure to appear

If any party fails to appear at the hearing, the Solicitors Disciplinary Tribunal may, upon proof of service on such party of the notice of hearing, proceed to hear and determine the proceedings in his absence, and in the absence of the applicant, the Solicitors Disciplinary Tribunal may, in their discretion, dismiss the application without a hearing.

12. Representation

Any party to an application or investigation may be represented by solicitor or counsel.

13. Re-hearing after failure to appear

- (1) Any party who has failed to appear at the hearing may, within one calendar month from the pronouncement of the findings and order of the Solicitors Disciplinary Tribunal and upon giving notice to every other party and to the clerk, apply to the Solicitors Disciplinary Tribunal for a re-hearing.
- (2) The Solicitors Disciplinary Tribunal, if satisfied that it is just that the case should be re-heard, may grant such application upon such terms as to costs or otherwise as they think fit.
- (3) Upon such re-hearing the Solicitors Disciplinary Tribunal may amend, vary, add to, or reverse their findings, or order, pronounced upon such previous hearing.

14. Evidence

The Solicitors Disciplinary Tribunal may either as to the whole case or as to any particular fact or facts proceed and act upon evidence given by affidavit -

Provided that any party to the proceedings may require the attendance upon summons of any deponent to any such affidavit for the purpose of giving oral evidence and of being cross-examined, unless the Solicitors Disciplinary Tribunal are satisfied that the deponent is absent from Hong Kong or is for any other good and sufficient reason unable to give evidence in person at the hearing.

15. Findings and order

The clerk shall give notice to the parties of the date when the findings and order will be pronounced.

16. Suspension of order pending appeal

The clerk shall on the day of pronouncement file the order pursuant to section 10(3) and section 12(2) of the Ordinance -

Provided that the Solicitors Disciplinary Tribunal may suspend the filing of the order pursuant to the said sections during the time limited for appeal under section 13 of the Ordinance and, if notice of motion of appeal is duly filed, then until determination or abandonment of such appeal.

17. Service of findings and order

Within 4 days of the date when the findings and order shall have been pronounced, the clerk shall send a copy thereof to each party.

PART III

(Repealed)

PART IV

GENERAL

25. Reference to Council of Society

The Solicitors Disciplinary Tribunal may at any stage of proceedings against a respondent refer the case or any aspect thereof to the Council and may adjourn the proceedings pending the consideration thereof by the Council so that the Council may, if it so decides, take such further proceedings under rule 3 against the respondent or undertake on behalf of the original applicant the prosecution of his application.

26. Withdrawal of proceedings

Unless the Solicitors Disciplinary Tribunal direct otherwise, no proceedings shall be withdrawn after they have been transmitted to the Solicitors Disciplinary Tribunal pursuant to rule 4.

27. Adjournments

The Solicitors Disciplinary Tribunal may of their own motion, or upon the application of any party, adjourn the hearing upon such terms as to costs, or otherwise, as the Solicitors Disciplinary Tribunal shall think fit.

28. Order of hearing proceedings

In the case of an application in respect of an employee of a solicitor or a trainee solicitor, the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel may on the application of any party or on their own motion order that any such application shall be heard prior to, in the course of, concurrently with or subsequent to the hearing of any proceedings under these rules against a solicitor, by whom the clerk or trainee solicitor is or was employed.

29. Amending and additional affidavits

- (1) If upon the hearing it shall appear to the Solicitors Disciplinary Tribunal that the allegations in an affidavit require to be amended, or added to, the Solicitors Disciplinary Tribunal may permit the affidavit to be amended, or added to, in which case such affidavit shall be resworn.
- (2) If in the opinion of the Solicitors Disciplinary Tribunal, such amendment or addition is not within the scope of the affidavit, the Solicitors Disciplinary Tribunal may require the same to be embodied in a further affidavit.

30. Shorthand notes

- (1) Shorthand notes of proceedings may be taken by a person appointed by the Solicitors Disciplinary Tribunal; and any party to the proceeding shall be entitled to inspect the transcript thereof.
- (2) The shorthand writer shall, if required, supply to the Solicitors Disciplinary Tribunal and to any person entitled to be heard upon an appeal against an order of the Solicitors Disciplinary Tribunal, and to the Council, but to no other person, a copy of the transcript of such notes on payment of his charges.
- (3) If no shorthand notes be taken, the Chairman of the Solicitors Disciplinary Tribunal shall take a note of the proceedings, and the provisions of this rule as to inspection and taking of copies shall apply to such note accordingly.

31. Service

- (1) Service of any notice or document under these rules may be effected personally or by registered "A.R." letter addressed, in the case of a solicitor, to his place of business or to his place of abode (if known) and, in every other case, to the last known place of business or abode of the person to be served, and such service shall be deemed to be effected at the time when the letter would be delivered in the ordinary course of post.
- (2) Notwithstanding the provisions of paragraph (1) the Solicitors Disciplinary Tribunal may make such order for substituted service as in the circumstances of the case may appear to be just.

32. Power of Solicitors Disciplinary Tribunal to dispense with requirements of rules

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

33. Extension or abridgement of time

The Solicitors Disciplinary Tribunal may extend or abridge the time for doing anything under these rules.

34. Retention of documents pending appeal

Unless the Solicitors Disciplinary Tribunal otherwise order, all affidavits, books, papers, records and exhibits produced, used or made in connexion with any proceedings under these rules shall be retained by the Solicitors Disciplinary Tribunal or the clerk until the time within which an appeal may be entered has expired, and, if notice of appeal is given (subject to the requirement of such appeal) until the appeal is heard or otherwise disposed of and thereafter shall be deposited for safe keeping with the Secretary General who shall hold the same on behalf of members of the Solicitors Disciplinary Tribunal who alone shall have access thereto.

35. Evidence

The Evidence Ordinance shall apply in relation to proceedings before the Solicitors Disciplinary Tribunal in the same manner as it applies in relation to civil and criminal proceedings.

36. Admission

- (1) Any party may by notice in writing at any time not later than 9 days before the day fixed for the hearing call upon any other to admit any document saving all just exceptions and if such other party desires to challenge the authenticity of the document he shall within 6 days after service of such notice give notice that he does not admit the document and requires it to be proved at the hearing.
- (2) If such other party refuses or neglects to give notice of non-admission within the time prescribed in paragraph (1), he shall be deemed to have admitted the document unless otherwise ordered by the Solicitors Disciplinary Tribunal.
- (3) Where a party gives notice of non-admission within the time prescribed by paragraph (1) and the document is proved at the hearing, the costs of proving the document shall be paid by the party who has not admitted the document, whatever the order of the Solicitors Disciplinary Tribunal may be, unless in their findings the Solicitors Disciplinary Tribunal shall find that there were reasonable grounds for not admitting the document.

- (4) Where a party proves document without having given notice to admit under paragraph (1) no costs of proving the document shall be allowed, unless otherwise directed by the Solicitors Disciplinary Tribunal, except where the omission to give notice to admit is in the opinion of the Solicitors Disciplinary Tribunal a saving of expenses.

37. Summons

A summons issued under section 11 of the Ordinance shall be in Form 6 or Form 7 in the Schedule as shall be appropriate.

SCHEDULE

FORM 1

[rule 3.]

FORM OF APPLICATION AGAINST A SOLICITOR / AN EMPLOYEE OF A SOLICITOR / A TRAINEE SOLICITOR

IN THE MATTER of C.D., a Solicitor (or as the case may be) of

and

IN THE MATTER of the Legal Practitioners Ordinance

TO: The Law Society of Hong Kong.

I, the undersigned, A.B., hereby make application that C.D., of Solicitor (or as the case may be), may be required to answer the allegations contained in the Affidavit / Affirmation which accompanies this application and that such order may be made as the Solicitors Disciplinary Tribunal shall think right.

In witness whereof I have hereunto set my hand this day of.....

Signature

Address
.....
.....

Profession, business or occupation

FORM 2

[rule 3]

FORM OF AFFIDAVIT / AFFIRMATION BY APPLICANT

IN THE MATTER of C.D., a Solicitor / an Employee of
a Solicitor / a Trainee Solicitor of

.....
and

.....
IN THE MATTER of the Legal Practitioners
Ordinance.

I, *..... of
make oath / do solemnly sincerely and truly affirm / and say as follows-

(Here state the facts concisely in
numbered paragraphs, and show
deponent's means of knowledge)

Sworn, affirmed. etc.

* Insert full name, address and description of deponent.

FORM 3

[rule 9]

FORM OF NOTICE OF HEARING TO APPLICANT / SOCIETY
BY THE CLERK TO THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER of C.D., a Solicitor / an
Employee of a Solicitor / a Trainee Solicitor
of
and

.....
IN THE MATTER of the Legal Practitioners
Ordinance

TO: A.B., of..... / Council

The day of is the day fixed by the Solicitors Disciplinary Tribunal constituted under the Legal Practitioners Ordinance for the hearing of your application in the matter of C.D.

The Solicitors Disciplinary Tribunal will sit at at..... o'clock in the noon. Your attendance will be required at the date, time and place aforesaid.

You are required by the Solicitors Disciplinary Tribunal Proceedings Rules to furnish to every other party and to the Clerk to the Solicitors Disciplinary Tribunal at the Registered Office of The Law Society of Hong Kong at least days before the date of hearing, a list of all the documents on which you propose to rely.

Any party may inspect the documents included in the list furnished by any other and a copy of any document mentioned in the list of any party must on application by the party requiring it be furnished to that party by the other within 7 days after receipt of such application.

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

Dated this day of

.....
Clerk to the Solicitors Disciplinary Tribunal.

(N.B.- A print of the Solicitors Disciplinary Tribunal Proceedings Rules is sent herewith for your information and guidance).

FORM 4

[rule 9]

FORM OF NOTICE TO RESPONDENT BY THE CLERK TO THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER of C.D., a Solicitor / an Employee of a Solicitor / a Trainee Solicitor of and IN THE MATTER of the Legal Practitioners Ordinance.

TO: *

Proceedings have been instituted against you under rule 3 of the Solicitors Disciplinary Tribunal Proceedings Rules byof

The day of is the day fixed by the Solicitors Disciplinary Tribunal for the hearing of the proceedings. The committee will sit at at o'clock in the noon. Your attendance will be required at the date, time and place aforesaid. If you fail to appear, the Solicitors Disciplinary Tribunal may, in accordance with rule 11 of the said Rules, proceed in your absence.

You are required by the said Rules to furnish to every other party and to the Clerk to the Solicitors Disciplinary Tribunal at the Registered Office of The Law Society of Hong Kong at least days before the date of hearing, a list of all the documents on which you propose to rely.

Any party may inspect the documents included in the list furnished by any other and a copy of any document mentioned in the list of any party must, on application by the party requiring it, be furnished to that party by the other within 7 days after receipt of such application.

In order to reduce the costs of the hearing you are invited to inform the Clerk to the Solicitors Disciplinary Tribunal not less than 7 days before the date of hearing of any facts set out in the affidavit which are not in dispute.

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

Dated this day of

Clerk to the Solicitors Disciplinary Tribunal.

(N.B.- A print of the Solicitors Disciplinary Tribunal Proceedings Rules is sent herewith for your information and guidance.)

* Insert name and address of respondent.

FORM 5

[rule 18]

(Repealed)

FORM 6

[rule 37]

FORM OF SUMMONS *AD TESTIFICANDUM*

IN THE MATTER of C.D., a Solicitor / an
Employee of a Solicitor / a Trainee Solicitor
of
and

.....
IN THE MATTER of the Legal Practitioners
Ordinance.

TO:

I command you to attend before the Solicitors Disciplinary Tribunal at..... on day, the
..... day of at the hour of..... in the noon, and so from
day to day until the application in the above matter is heard, to give evidence on behalf of

Chairman of the Solicitors Disciplinary Tribunal constituted under section 9B(1) of the Legal
Practitioners Ordinance, the day of

FORM 7

[rule 37]

FORM OF SUMMONS *DUCES TECUM*

IN THE MATTER of C.D., a Solicitor / an
Employee of a Solicitor / a Trainee Solicitor
of.....
and

.....
IN THE MATTER of the Legal Practitioners
Ordinance.

TO:

I command you to attend before the Solicitors Disciplinary Tribunal at..... on day,
the day of..... at the hour of in the noon, and so from
day to day until the application in the above matter is heard, to give evidence on behalf of and also to
bring with you and produce at the time and place aforesaid (specify documents to be produced).

Chairman of the Solicitors Disciplinary Tribunal constituted under section 9B(1) of the Legal
Practitioners Ordinance, the day of.....