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# 27. Barristers Disciplinary Tribunal Proceedings Rules

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## PART I

### PRELIMINARY

#### 1. Interpretation

In these Rules, unless the context otherwise requires –

“applicant” (申請人) means the Bar Council or, in the event of a submission under section 35(2) of the Ordinance, such person as may be appointed by the Chief Judge under section 2;

“inquiry” (研訊) means an inquiry under section 35A of the Ordinance;

“respondent” (答辯人) means a barrister whose conduct is the subject of an inquiry;

“Tribunal” (審裁組) means a Barristers Disciplinary Tribunal constituted under section 35A of the Ordinance;

“Tribunal Convenor” (審裁組召集人) means the Tribunal Convenor appointed under section 34 of the Ordinance.

PART II

PROCEEDINGS ON AN INQUIRY UNDER SECTION 35A OF THE ORDINANCE

**2. Appointment of applicant by the Chief Judge**

Where the Chief Judge submits a matter to the Tribunal Convenor under section 35(2) of the Ordinance he shall appoint a person to be the applicant for the purpose of the inquiry, and shall inform the Tribunal Convenor of the name and address of that person.

**3. Parties to be notified of proceedings**

- (1) Within 7 days after the appointment of persons under section 35A(1) of the Ordinance, the Tribunal Convenor must, by notice in writing, inform the applicant and the respondent that a Tribunal has been constituted to inquire into the respondent's conduct.
- (2) As soon as practicable after the constitution of a Tribunal, the chairman of the Tribunal must, by notice in writing, inform the applicant and the respondent of –
  - (a) the date, time and place of the first hearing of the inquiry; and
  - (b) the names of the members of the Tribunal.
- (3) the chairman of the Tribunal must also, by notice in writing, inform the applicant and the respondent of the date, time and place of each subsequent hearing of the inquiry.

**4. Applicant to serve particulars and other documents**

An applicant shall, within 7 days after receipt of notification under section 3(1), serve –

- (a) on the respondent, by sending to him by prepaid registered post at his chambers' address or such other address as may be directed by the Tribunal –
  - (i) a document setting out particulars of the misconduct alleged against him in the matter as submitted to the Tribunal Convenor; and
  - (ii) in the case of a submission under section 35(1) of the Ordinance following a complaint to the Bar Council, a statement of the complainant if the same be available; and
  - (iii) statements in the possession of the applicant from any witness, in so far as the same are relevant; and
  - (iv) copies of documents in the possession of the applicant, in so far as the same are relevant; and
  - (v) (Repealed)
- (b) on the complainant, by sending to him by ordinary post at his residential or business address, the like documents as set out in paragraph (a)(i), and such other documents as the applicant thinks fit; and
- (c) on the chairman of the Tribunal, by sending to him by ordinary post, the like documents as set out in paragraph (a).

**5. Respondent to admit or dispute particulars**

A respondent shall, within 14 days from the date of despatch of the documents by the applicant to him in accordance with section 4(a), inform in writing the chairman of the Tribunal and the applicant –

- (a) whether he admits or disputes the misconduct alleged against him as set out in the document referred to in section 4(a)(i); and
- (b) if he admits the misconduct alleged against him, whether he wishes to call any evidence in mitigation.

**6. Orders or directions by Tribunal**

A Tribunal may give such orders or directions for the conduct of an inquiry, including orders or directions for amendment of the misconduct alleged against the respondent, as it thinks fit.

**7. Burden of proof**

In an inquiry before a Tribunal, the burden of proof shall be upon the applicant.

**8. Procedure and rules of evidence**

A Tribunal may determine its own procedure and rules of evidence.

**9. Record of proceedings**

A Tribunal shall make such provisions as may be necessary for the taking of an official record of the proceedings and may, if no shorthand writer is available, appoint one of its members or any other person to take a note of the proceedings whose notes shall be the official record of the inquiry.

**10. Failure of party to appear at hearing**

If any party fails to appear at a hearing, the Tribunal may, upon proof of service on such party of the notice of hearing, proceed with the inquiry in his absence and may, in the case of absence of the applicant, dismiss the allegation of misconduct against the respondent.

**11. Appearance by solicitor or counsel**

The parties may appear at an inquiry by solicitor or counsel.

**12. Tribunal to inform parties of order**

The Tribunal shall inform the parties in writing of its order.

**13. Application for re-hearing**

- (1) Any party who has failed to appear at a hearing may, within 21 days from the making of an order by the Tribunal under section 37 of the Ordinance, and upon giving notice to the Tribunal and to the other party, apply to the Tribunal for a re-hearing.
- (2) The Tribunal may grant such application for a re-hearing upon such terms as to costs or otherwise as it thinks fit.
- (3) Upon any re-hearing, the Tribunal may amend, vary, add to, or reverse its findings or order pronounced at the previous hearing.

**14. Disposal of exhibits etc.**

Unless the Tribunal otherwise orders, all documents and exhibits produced, used or made in connection with any proceedings under these Rules and the official record shall be retained by the Tribunal until the time for an application for a re-hearing under section 13 or the time for an appeal under section 37B of the Ordinance has expired and if at the expiration of such time no application or appeal has been lodged, such documents, exhibits and record shall, unless the Tribunal otherwise orders, be transmitted to and retained by the Bar Council for not less than 3 years.

**15. Disposal of exhibits etc. following appeal**

- (1) Where an appeal is lodged under section 37B of the Ordinance, the Tribunal shall cause the documents, exhibits and record to be transmitted to the clerk of the Court.
- (2) At the conclusion of an appeal, unless the Court of Appeal otherwise orders, such documents, exhibits and record shall be transmitted to and retained by the Bar Council for not less than 3 years.

PART III

PROCEEDINGS IN RELATION TO  
VARIATION OF SUSPENSION OR STRIKING OFF ORDER

**16. Constitution of Tribunal on application for variation**

Where an application made by a barrister under section 38 of the Ordinance is received by the Tribunal Convenor, section 35A of the Ordinance shall apply as it applies in the case of a submission to the Tribunal Convenor under section 35 of the Ordinance.

**17. Tribunal to inform parties**

A Barristers Disciplinary Tribunal constituted for the purposes of section 38 of the Ordinance shall –

- (a) inform the barrister and the Bar Council of the identity of the Chairman and its members;
- (b) fix a date and time of its hearing and give the barrister and the Bar Council not less than 14 days' notice of the same.

**18. Application of sections 6, 8 and 9**

Sections 6, 8 and 9 shall apply to a Barristers Disciplinary Tribunal constituted under section 38 of the Ordinance as they apply to a Tribunal constituted under section 35A of the Ordinance.

PART IV

TRANSITIONAL

**19. Application to pending complaints**

These Rules shall apply regardless of whether the misconduct in question is alleged to have taken place, or a complaint in respect of the alleged misconduct was made, prior to the coming into force of these Rules.