

**ADVOCATES (DISCIPLINARY PROCEEDINGS)
(PROCEDURE) RULES 2018
(G.N.S 9 of 2018)**

In exercise of the powers conferred by subsection 12I(1) of the Advocates Ordinance (*Cap. 2*), the Disciplinary Board hereby makes the following rules:

Citation, application and commencement

1. (1) These rules may be cited as the Advocates (Disciplinary Proceedings) (Procedure) Rules 2018, and shall apply to disciplinary proceedings conducted by the Disciplinary Board under sections 12C, 12D, 12E, 12F and 12G of the Ordinance.

(2) These Rules are deemed to have come into operation on 2 February 2018.

Interpretation

2. In these Rules, unless the context otherwise requires -

“Advocate concerned” means the Advocate against whose conduct in his professional capacity the complainant has preferred his complaint;

“complainant” means the person including an Advocate, who has made any complaint to the Disciplinary Board under subsections 12C(1) of the Ordinance;

“Disciplinary Board” means the Board established under subsection 12A(1) of the Ordinance;

“Ordinance” means the Advocates Ordinance (*Cap.2*);

“statutory declaration” means a declaration under the Statutory Declaration Act 1960.

Complainant to submit statement of facts

3. (1) The Disciplinary Board shall on commencing to function as such Board call upon the complainant to submit, within such time as may be fixed not being less than

7 days, four copies of a particularized statement in writing of facts without argument of his complaint in numbered paragraphs setting out the essential facts and the documents on which he proposes to rely in support of his complaint.

(2) Such statement shall be supported by a statutory declaration verifying the truth of the allegation made by the complainant and shall have exhibited to it copies of all the documents referred to therein and intended by him to be relied on at the hearing; it shall also contain a proper address at which the answer or any other document may be served on him.

(3) A copy of such statement shall be served by the Disciplinary Board on the Advocate concerned.

Scrutiny of statement of facts by Disciplinary Board

4. (1) The Disciplinary Board shall ensure that such statement shall strictly be confined to matters relevant or essentially related to the original complaint made to the Board.

(2) If such statement shall contain irrelevant, unrelated or additional matter it shall be returned by the Disciplinary Board to the complainant for him suitably to amend the same within such time as may be fixed and not being less than 14 days.

(3) The Disciplinary Board shall thereupon, inform the Advocate concerned of such action.

Disciplinary Board to report in case of statement not amended as required

5. If the statement returned for amendment under rule 4 shall not have been amended either within the time limited or within such extended time as may be allowed the Disciplinary Board shall so report to the Chief Judge of the High Court in Sabah and Sarawak and subject to any direction by the Chief Judge of High Court in Sabah and Sarawak the disciplinary proceeding shall be deemed to be at an end.

Advocate concerned to answer the allegation

6. (1) The Advocate concerned shall, within 10 days after receipt of the statement (or where the Disciplinary Board has acted under rule 4, then within 10 days after receipt of the amended statement) answer in writing the particulars of the allegation in similar numbered paragraphs setting out the essential facts in answer without argument.

(2) Such answer shall be supported by a statutory declaration verifying the truth of the answer made by the Advocate concerned and shall have exhibited to it copies of all documents referred to therein and intended to be relied on by him.

(3) Four copies of such answer shall be provided to the Disciplinary Board.

(4) A copy of the answer shall be served by the Disciplinary Board on the complainant or each of the complainants if more than one.

Disciplinary Board to fix hearing

7. Upon receipt of the answer or if the Advocate concerned does not comply with rule 6, as the case may be, the Disciplinary Board shall fix a date, time and place for hearing of the complaint, and notify the complainant and the Advocate concerned of the same and if on the date fixed for such hearing the Advocate concerned does not appear, the Disciplinary Board may proceed to hear the complaint in his absence and if the complainant does not appear the Disciplinary Board may dismiss the complaint.

Right of Advocate concerned to cross-examine

8. On the date fixed for such hearing, the complainant shall be liable to be cross-examined by the Advocate concerned on his statement of complaint, before he is permitted to call his witnesses, if any, who shall also be liable for cross-examination.

Advocate concerned liable to be cross-examined

9. The Advocate concerned shall then be liable to be cross-examined on his answer by the complainant after which he shall be permitted to call his witnesses, if any, who shall be liable to cross-examination by the complainant.

Right of representation

10. Either side shall have the right to be represented by a Counsel of his choice.

Power of Disciplinary Board to extend time or to adjourn hearing

11. The Disciplinary Board may extend the time limited by these Rules for any act to be done and may adjourn the hearing from time to time and give such directions as may be necessary to permit a full and fair hearing of the complaint.

Recording testimony

12. It shall not be obligatory for the Disciplinary Board to make a detailed record of all the oral testimony given before it; but it shall be sufficient to make a summary of the relevant testimony.

Service of documents

13. Where any document has to be served on the complainant or the Advocate concerned, it may be served by sending it by prepaid registered post at his address or at his last known address or by such other means as may be determined by the Disciplinary Board.

Processing Fee

14. (1) A complainant shall pay to the Disciplinary Board the sum of one hundred ringgit or such other sum as the Disciplinary Board may determine from time to time as a processing fee.

(2) Subrule (1) shall not apply when the complainant is the Law Society or any other person referred in subsection 12C(2) of the Ordinance.

(3) All sums paid under this rule shall be non-refundable and credited into the Discipline Fund.

(4) Notwithstanding subrule (1), the Disciplinary Board may waive in whole or in part of the payment of the processing fee as it deems fit.

Made this 2 February 2018.

DATUK DOUGLAS CRISTO PRIMUS SIKAYUN
Chairman, Disciplinary Board

Sabah LawNet