

**THE DISTRICT LAW PRACTITIONERS DISCIPLINARY
TRIBUNALS RULES 1984**

PURSUANT to section 130 of the Law Practitioners Act 1982, the New Zealand Law Practitioners Disciplinary Tribunal hereby makes the following rules.

ANALYSIS

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RULES

1. Title and commencement—(1) These rules may be cited as the District Law Practitioners Disciplinary Tribunals Rules 1984.

(2) These rules shall come into force on the 29th day of February 1984.

2. Interpretation—In these rules, unless the context otherwise requires,—

“The Act” means the Law Practitioners Act 1982:

“Prosecuting body” means the District Council or complaints committee by which a charge against a practitioner is made before a Tribunal:

“Secretary” means the Secretary to the Tribunal if one has been appointed under section 123; and, if no Secretary has been appointed, means the Chairman of the Tribunal or any person nominated by the Chairman to act for the time being as Secretary:

“Tribunal” means a District Law Practitioners Disciplinary Tribunal:

Expressions defined in the Act have the meanings so defined:

A reference to a numbered section is a reference to the section so numbered in the Act:

A reference to a numbered form is a reference to the form so numbered in the Schedule to these rules.

PART I

CHARGE AGAINST PRACTITIONER

3. Making of charge—(1) Every charge made before a Tribunal under section 101 shall be in writing signed by a member of or the secretary to

the District Council or complaints committee making the charge, and shall be accompanied by a statement of the relevant facts alleged against the practitioner in respect of the charge:

Provided that, if having regard to the circumstances of the case the prosecuting body thinks it necessary or desirable to do so, the charge may be supported by affidavit instead of or in addition to a statement of facts.

(2) The charge and statement of facts, and any affidavit in support, shall be lodged with the Secretary to the Tribunal.

4. Notice of charge—The Secretary shall serve or cause to be served on the practitioner a notice in form 1 or to the like effect, together with a copy of the charge and of the statement of facts and of any affidavit lodged in support.

5. Plea—(1) Within 14 days after the date of service of the notice the practitioner shall notify the Secretary in writing whether he or she—

(a) Pleads guilty or not guilty to the charge:

(b) Admits or denies the facts, or any of them, alleged in the statement of facts or in any accompanying affidavit.

(2) If within that time, or such further time as the Tribunal may allow, the practitioner does not notify the Secretary of his or her plea, the practitioner shall be taken to have pleaded not guilty to the charge.

6. Notice of hearing—(1) After the receipt by the Secretary of notice of the practitioner's plea, or, where no such notice is received within the time prescribed or allowed under rule 5 of these rules, after the expiry of that time, the Tribunal or its Chairman, or the Secretary or a member acting with the authority of the Tribunal or Chairman, shall fix a day, time and place for the holding of the inquiry pursuant to section 106.

(2) Not less than 14 clear days before the day so fixed, the Secretary shall serve or cause to be served—

(a) On the prosecuting body, a notice in form 2 or to the like effect:

(b) On the practitioner, a notice in form 3 or to the like effect.

7. Directions as to evidence and conduct of inquiry—(1) The Tribunal may at any time of its own motion or on the application of the prosecuting body or the practitioner, and whether or not the practitioner admits the facts or any of the facts alleged, give such directions as it thinks fit for the efficient and expeditious conduct of the inquiry.

(2) Without limiting the generality of subclause (1) of this rule, the Tribunal may—

(a) Direct that the statement of facts be enlarged or made more explicit:

(b) Subject to such conditions (if any) as it thinks fit, direct the prosecuting body or the practitioner to produce to the Tribunal and to the other party any document, or a copy of any document, that is relevant to the charge:

(c) Direct the prosecuting body to lodge with the Tribunal an affidavit or affidavits relating to any matter in issue, and to serve a copy of every such affidavit on the practitioner, within such time as the Tribunal thinks fit:

(d) Specify the time within which the practitioner shall lodge with the Tribunal and serve on the prosecuting body any affidavit on which the practitioner wishes to rely; and direct or permit the prosecuting body to lodge and serve affidavits in reply within such further time as the Tribunal may allow:

(e) Subject to section 126, direct that the evidence at the hearing shall be given by affidavit, or orally, or partly by affidavit and partly orally:

(f) Require the prosecuting body or the practitioner either to admit, or not admit, any relevant documents within such time as the Tribunal thinks fit.

(3) Subject to section 126, if no direction is given under this rule the inquiry shall proceed on the basis of the charge and accompanying statement of facts or affidavits lodged under rule 3 of these rules.

8. Further information for purposes of order—(1) If the Tribunal decides that it may or will make an order or orders under section 106, it may require the prosecuting body to supply to the Tribunal such further information or material as the Tribunal may specify for the purpose of assisting it to determine which, if any, of the orders referred to in that section are appropriate.

(2) Before making any such order, the Tribunal shall cause full particulars of any further information or material so supplied to be given to the practitioner, and shall give him an opportunity to be heard or to make written representations in respect of it.

9. Failure to appear—If either party fails to appear at the hearing, the Tribunal, having regard to all the circumstances, may in its discretion—

(a) Adjourn the hearing; or

(b) On proof of service on the party of the notice of hearing, and without limiting its power to adjourn, hear and determine the charge in the party's absence; or

(c) Dismiss the charge.

10. Persons charged jointly—Where 2 or more persons are charged jointly, the Tribunal may, after hearing the parties affected, determine whether the charges shall be heard together or separately, and, if together, the order of evidence and addresses.

11. Service of disciplinary order—If the Tribunal makes an order under section 106 the Secretary shall serve or cause to be served a copy of it on the practitioner and on the prosecuting body.

12. Referral of charge to New Zealand Disciplinary Tribunal—If a charge is referred to the New Zealand Law Practitioners Disciplinary Tribunal under section 106 (2), the Secretary shall, forthwith after lodging the charge and other documents with that Tribunal pursuant to the New Zealand Law Practitioners Disciplinary Tribunal Rules 1984, serve or cause to be served on the practitioner and on the prosecuting body a notice stating that the charge has been so referred.

PART II

GENERAL PROVISIONS

13. Deputy Chairman—(1) The members of the Tribunal shall, at its first meeting in each year, elect one of their number to be the Deputy Chairman for that year, as well as the Chairman required by section 103 (4) to be elected.

(2) If the Chairman is absent from any meeting the Deputy Chairman shall preside.

(3) If both the Chairman and the Deputy Chairman are absent the members present shall elect one of their number to be the Chairman for that meeting.

14. Number of copies to be lodged—Whenever a charge, statement of facts, affidavit, or application is lodged with the Secretary under these rules it shall be accompanied by 10 copies.

15. Address for service—(1) The first document lodged with the Secretary by any party to any proceedings shall state at its foot the address for service of the party by whom it is lodged.

(2) The address for service may from time to time be altered by reasonable notice in writing to the Secretary and to the other parties to the proceedings.

16. Appointment of counsel—At any stage of any proceedings the Tribunal may, if it thinks fit, appoint counsel to represent the person charged.

17. Leave to withdraw proceedings—(1) Except by leave of the Tribunal, no charge shall be withdrawn after it has been lodged with the Secretary.

(2) Unless the Tribunal otherwise directs, an application for leave to withdraw shall be made on the day of the hearing.

(3) On any such application, the Tribunal may—

(a) Grant leave on such terms and subject to such conditions as it thinks fit; or

(b) Adjourn the proceedings.

18. Adjournments—(1) The Tribunal may from time to time of its own motion, or on the application of either party, adjourn the hearing to such time and place and on such terms and subject to such conditions as it thinks fit.

(2) At any time before the hearing or any adjourned hearing, and with the consent of the parties, the Chairman or the Deputy Chairman may adjourn or further adjourn the hearing if it appears that in the special circumstances of the case it is necessary or expedient to do so.

(3) When a hearing is adjourned under any provision of these rules the Tribunal may fix in respect of the adjournment a sum or sums by way of costs and expenses to be made payable by any party under any order subsequently made pursuant to section 106 or section 129.

19. Amendment or addition of charge—(1) Subject to subclause (2) of this rule, if at the hearing of a charge it appears to the Tribunal that the charge ought to be amended or added to, it may of its own motion, or on the application of either party, amend or add to the charge.

(2) If in the Tribunal's opinion the amendment or addition is such as to take the practitioner by surprise or to prejudice the conduct of the case, the Tribunal shall adjourn the hearing.

20. Record of proceedings—(1) A record shall be taken of the proceedings at every hearing, and shall be handed to the Secretary at the conclusion of the hearing.

(2) Any party who appeared at the hearing may at all reasonable times inspect the record or a transcript of it.

(3) The Secretary shall, if required, supply a copy or transcript of the record to—

(a) The Tribunal; and

(b) Any person entitled to be heard on an appeal against an order or decision of the Tribunal made or given in the proceedings; and

(c) The New Zealand Law Practitioners Disciplinary Tribunal on an appeal—

but to no other person.

21. Notices by Secretary or other person—Any notice or document required to be given or signed by the Secretary may be given or signed either by the Secretary or by any other person authorised by the Tribunal to do so.

22. Method of service—(1) Service of any notice or document required to be served on any person in respect of any proceedings may be effected by—

(a) Delivering it to the person personally; or

(b) Leaving it, or sending it by registered post, addressed to the person at the address for service (if given) or at the person's last known place of abode or business in New Zealand; or

(c) In such other manner as the Tribunal may direct.

(2) Unless the contrary is shown, where service is not effected personally or at the address for service, proof that the notice or document was so addressed and left or so posted, shall be proof of service and where service is effected by registered post, service shall be deemed to have been effected at the time when the notice or document would have been delivered in the ordinary course of post.

23. Enlargement or abridgment of time—The Tribunal may enlarge or abridge the time for doing any act or thing under these rules, whether or not the time for doing it has expired.

24. Tribunal may dispense with certain requirements—In any case where it appears to the Tribunal to be just to do so, it may dispense with any requirement of these rules relating to notices, affidavits, documents, service, time, or any other matter.

25. Filing and production of records, documents, and exhibits—

(1) All documents lodged with the Tribunal shall be filed and kept by the Secretary.

(2) The Tribunal may order that any books, papers, or other exhibits produced or used at a hearing shall be retained by the Secretary until the time for appeal has expired and, if an appeal is made, until the appeal is heard or otherwise disposed of.

26. Savings—All charges before the Tribunal at the coming into force of these rules and not disposed of before then shall be continued and disposed of as if these rules had not been passed.

SCHEDULE

Form 1—Notice of Charges

Rules 4, 5

BEFORE THE LAW PRACTITIONERS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Law
Practitioners Act 1982

and

IN THE MATTER of C.D., a
barrister and solicitor

TO C.D., of barrister and solicitor.

Disciplinary charges have been made against you by the Council/complaints committee of the District Law Society.

Attached to this notice are copies of the charges made against you and of a statement of the relevant facts alleged in respect of the charges (or of the affidavits in support).

Your attention is particularly drawn to the following:

(1) You are required within 14 days after the date of service of this notice on you to notify the Secretary to the Tribunal in writing—

- (a) Whether you plead guilty or not guilty to any or all of the charges;
- (b) Whether you admit or deny the facts, or any of them, alleged in the statement of facts (or affidavits).

(2) An admission of any facts will not of itself be taken as an admission that those facts constitute—

- (i) Misconduct in your professional capacity; or
- (ii) Conduct unbecoming a barrister or solicitor; or
- (iii) Negligence or incompetence of the kind described in section 106 (3) (c) of the Law Practitioners Act 1982.

(3) If at the expiry of the period of 14 days, or such further time as the Tribunal may on your application allow, you have not notified the Secretary of your plea, you shall be taken to have pleaded not guilty to the charges.

(4) If you intend to plead guilty to any charge or admit any of the facts, you should do so if possible within the prescribed time. This could help to shorten and reduce the cost of the hearing and reduce the amount of any costs that may be awarded against you.

(5) You will later be notified of the day, time, and place of the hearing of the charges.

(6) You are strongly advised that it is in your own interests to obtain legal representation without delay.

Your attention is further drawn to the copies of the District Law Practitioners Disciplinary Tribunals Rules 1984 and of Part VII of the Law Practitioners Act 1982 enclosed with this notice.

Dated this day of 19.....

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Secretary to the
Law Practitioners
Disciplinary Tribunal.

THIS Notice is issued by, Secretary to the Tribunal, whose address is

SCHEDULE—continued

Form 2—Notice of Hearing (to District Council or complaints committee)

Rule 6

BEFORE THE LAW PRACTITIONERS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Law
Practitioners Act 1982

and

IN THE MATTER of C.D., a
barrister and solicitor

To the Council/complaints committee District Law Society.
..... day the day of 19..... is the day fixed for
the hearing of charges made by you against C.D., a barrister and solicitor,
before the Law Practitioners Disciplinary Tribunal.

The Tribunal will sit at at o'clock in the morning
(afternoon).

Notice of the charges was served on the practitioner, who was required,
within 14 days after service, to notify the Secretary to the Tribunal in
writing whether he pleaded guilty or not guilty to the charges or any of
them, and whether he admitted or denied the facts, or any of them, alleged
in the statement of facts (or affidavits).

The 14 days' notice has now expired. The practitioner—

- * has pleaded guilty to the charges numbered
- * has pleaded not guilty to the charges numbered
- * admits the following facts alleged in the statement of facts (or
affidavits):
- * has not entered a plea.

Dated this day of 19.....

.....
Secretary to the
Law Practitioners
Disciplinary Tribunal

*Delete whichever does not apply.

THIS Notice is issued by, Secretary to the Tribunal, whose address
is



SCHEDULE—*continued**Form 3—Notice of hearing (to the practitioner charged)*

Rule 6

BEFORE THE LAW PRACTITIONERS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Law
Practitioners Act 1982

and

IN THE MATTER of C.D., a
barrister and solicitor

To C.D., of barrister and solicitor.

..... day the day of 19..... is the day fixed for the hearing of the charges made against you by the Council/complaints committee of the District Law Society before the Law Practitioners Disciplinary Tribunal. Copies of the charges and statement of relevant facts alleged against you (*or supporting affidavits*) were served on you by notice dated by the Secretary to the Tribunal.

The Tribunal will sit at at o'clock in the morning (afternoon).

.....
Secretary to the
Law Practitioners
Disciplinary Tribunal.

DATE OF MAKING OF RULES

The foregoing rules were duly made by the New Zealand Law Practitioners Disciplinary Tribunal at a meeting of the Tribunal held at Wellington on the 6th day of December 1983.

J. E. Towle,
Chairman of the Tribunal.

A. D. Ritchie,
Secretary to the Tribunal.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules were made by the New Zealand Law Practitioners Disciplinary Tribunal pursuant to section 130 of the Law Practitioners Act 1982. They govern the bringing, hearing, and determination of proceedings before the District Law Practitioners Disciplinary Tribunals.