



BERMUDA

BAR DISCIPLINARY TRIBUNAL RULES 1997

BR 55 / 1997

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

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Citation

1 These Rules may be cited as the Bar Disciplinary Tribunal Rules 1997.

Application and interpretation

2 (1) These Rules shall have effect in relation to the hearing and determination of complaints by a disciplinary tribunal appointed by the Chief Justice under section 19 of the Act.

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

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

“the Board” means the Barristers and Accountants AML/ATF Board;

“clerk” means a clerk to a disciplinary tribunal appointed under section 20 of the Act;

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

“committee representative” means a member of the Committee so designated under section 18 of the Act;

“complainant” includes the Board;

“disciplinary tribunal” means a tribunal appointed by the Chief Justice under section 19 of the Act;

“respondent” means a barrister, professional company or registered associate against whom a complaint of improper conduct has been made by—

(a) any person to the Bar Council under section 21(1) of the Act;

(b) the Bar Council on its own motion under section 21(3) of the Act; or

(c) the Board on its own motion under section 21(3A) of the Act.

“specified activity” means an activity referred to in section 49(5) of the Proceeds of Crime Act 1997.

(3) These Rules, with any necessary modifications, apply to a professional company in the same way as to a barrister.

[Rule 2 amended by 2009:29 s.20 effective 19 October 2009; Rule 2 definition "respondent" revoked and replaced, and definitions "the Board", "complainant" and "specified activity" inserted by BR 121 / 2018 rule 2 effective 4 October 2018]

Sittings of disciplinary tribunals

3 (1) Subject to paragraph (3) of this rule, a disciplinary tribunal shall sit from day to day to hear evidence in respect of a charge made against a respondent until it has arrived at a finding in respect of the charge and if any charge has been found proved, until a sentence is pronounced and an order has been made by it pursuant to that sentence.

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(2) A complainant and a respondent shall be parties to any hearing or preliminary hearing in respect of a complaint of improper conduct.

(3) A disciplinary tribunal shall sit in such place and at such time as the Chairman of the tribunal may direct.

Adjournment of proceedings

4 Notwithstanding rule 3(1), the Chairman of a disciplinary tribunal may, on his own motion or upon the application of any party to disciplinary proceedings, adjourn a hearing or preliminary hearing for such period and upon such terms as he thinks fit in accordance with the rules of natural justice.

Amendment of charges after service

5 (1) A disciplinary tribunal may, at any time before or during a hearing, permit either party to the disciplinary proceedings to amend a charge, and this shall include, but shall not be limited to, circumstances where the charge to be amended falls outside the scope of the complaint considered by the Committee.

(2) After considering whether to permit an amendment to a charge under paragraph (1) of this rule, a disciplinary tribunal—

- (a) may permit the amendment if it is satisfied that a respondent will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence;
- (b) shall, if so requested by the respondent, adjourn the disciplinary proceedings for such time as is reasonably necessary to enable him to defend the amended charge.

(3) Where a disciplinary tribunal determines that a charge should be amended and permits such amendment, the tribunal shall make such order as to the cost occasioned by the amendment, or of any consequential adjournment of the proceedings arising therefrom, as it considers appropriate.

Extension of time limits

6 Upon the application of either party to disciplinary proceedings the Chairman of a disciplinary tribunal may, at any time before the substantive hearing, extend or abridge any time limit imposed under these Rules on such terms as he thinks just.

Agreed directions

7 (1) Notwithstanding rule 8, the parties to disciplinary proceedings may, prior to the date fixed for a preliminary hearing, agree upon the directions to be made or steps to be taken for the just and expeditious conduct of the proceedings, or that no such directions or steps are required, and shall notify the clerk in writing of such an agreement.

(2) Where a disciplinary tribunal receives written notification of such an agreement under paragraph (1) of this rule, the Chairman thereof may, if he thinks fit—

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- (a) endorse the directions in the terms agreed and direct that no preliminary hearing is required, notwithstanding rule 8(1);
- (b) endorse the directions in the terms agreed and direct that a preliminary hearing shall be held nevertheless on the date so fixed for that purpose; or
- (c) refuse to give directions in the terms agreed and direct that a preliminary hearing shall be held on the date so fixed for that purpose.

Preliminary hearing

8 (1) Subject to rule 7, a disciplinary tribunal shall hold a preliminary hearing for the purpose of giving directions to the parties and taking such other steps as it considers appropriate for the clarification of the issues before the tribunal and generally for the just and expeditious conduct of a disciplinary hearing.

(2) The preliminary hearing shall be held on a date fixed by the Chief Justice therefor or, in any event, not more than 28 days after the date on which the Chief Justice issues a Convening Notice under section 22 of the Act and causes it to be served upon a respondent.

(3) At a preliminary hearing, a disciplinary tribunal may give directions to the parties to the disciplinary proceedings in relation to—

- (a) the matter whether the hearing should be held in private or in public;
- (b) the matter whether there should be separate hearings where the complaint involves more than one charge;
- (c) the attendance of witnesses;
- (d) the requirement that the parties provide each other with the names of all witnesses to be called at the hearing and statements of their evidence within a specified time limit;
- (e) the inspection of documents contained in the list of documents served on a respondent;
- (f) the admission of documents;
- (g) the admission of facts;
- (h) the estimated duration of the substantive hearing; and
- (i) such other matters as it deems expedient for the efficient conduct of the hearing.

(4) In pursuance of sub-paragraph (g) of paragraph 3 of this rule, a disciplinary tribunal may, if it thinks fit, direct that a respondent or his representative, either forthwith or in writing within such time as may be specified, state—

- (a) whether any fact relied on in support of a charge is disputed; and if so,
- (b) the ground on which the fact is disputed.

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(5) Upon the application of either party to the disciplinary proceedings, or on his own motion, the Chairman of a disciplinary tribunal may direct that further preliminary hearings shall be held for the purpose of giving any additional directions or taking any other steps which he considers necessary for the proper conduct of the disciplinary proceedings.

Record of proceedings at preliminary hearing

9 (1) The clerk shall take a note of the proceedings at a preliminary hearing setting out the directions given or admissions made thereat and the note shall include, without prejudice to the generality of the directions given, any directions which relate to any of the matters in paragraph (3) of rule 8.

(2) The clerk shall cause a record of the note to be drawn up and served on the parties not later than 10 days before the commencement of the hearing.

Provision of documents to disciplinary tribunal prior to hearing

10 Within 14 days prior to the commencement of the hearing of a complaint, a clerk to a disciplinary tribunal shall cause to be provided to each member of the tribunal copies of the following—

- (a) any documents proposed to be relied on by counsel for the parties to the disciplinary proceedings, unless a direction has been made at the preliminary hearing or otherwise that copies of such documents do not have to be disclosed;
- (b) any written answer to the charges submitted by or on behalf of a respondent;
- (c) such other documents, which may include copies of witness statements, which have at the preliminary hearing or otherwise been directed to be, or the parties to the disciplinary proceedings have agreed should be, laid before the tribunal prior to the start of the hearing;
- (d) the record of any directions given at a preliminary hearing, or any directions agreed upon by the parties to the disciplinary proceedings and endorsed by the tribunal where no preliminary hearing has been held.

The hearing

11 (1) The proceedings of a disciplinary tribunal shall be governed by the rules of natural justice.

(2) In the conduct of the hearing of any complaint, a disciplinary tribunal shall direct its clerk to ensure that—

- (a) adequate notice of the proceedings is given to a complainant and respondent and that the parties have complied with any direction or order made by a tribunal under section 19A of the Act; and
- (b) any party to the proceedings may, if he so requires, be heard by the tribunal either in person or by counsel.

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Record of proceedings at hearing

12 (1) The clerk shall ensure that a note is taken of the hearing and this shall include any evidence given to a disciplinary tribunal.

(2) For the purposes of a disciplinary hearing, the clerk shall arrange for a note of the proceedings to be taken by a shorthand writer or recorded by the use of a recording machine.

Hearing in private or in public

13 A hearing before a disciplinary tribunal shall be in private unless—

- (a) a respondent has made an application that the hearing shall be in public; and
- (b) the public interest does not require the hearing to be in private.

Admission of evidence at hearing

14 (1) Subject to the rules of natural justice, a disciplinary tribunal may—

- (a) admit any evidence, whether oral or written, direct or hearsay, and whether or not such evidence would be admissible in a court of law:

Provided that, a disciplinary tribunal may exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence;

- (b) give such directions with regard to the conduct of and procedure at the hearing and the admission of evidence thereat as it considers appropriate for ensuring that a respondent has a proper opportunity to answer a charge.

(2) Where a disciplinary tribunal is of the opinion that a respondent shall not be materially prejudiced thereby, it may hear evidence from a witness even if—

- (a) a copy of a witness statement has not been served on the respondent either at all or within the time limit specified by rule 10;
- (b) a document upon which counsel intends to rely has not been included in the list of documents served upon a respondent with a Convening Notice.

Evidence of decisions of a court or other tribunal at hearing

15 (1) Subject to the provisions of this rule, where there is evidence before a disciplinary tribunal that a respondent has been the subject of a decision of a court or other tribunal and it is shown that the decision is relevant to the matters before the tribunal, that decision may be admitted in evidence at the hearing of the charge as *prima facie* proof that such a decision was made.

(2) A conviction for a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence and proof of such a conviction in this manner shall constitute *prima facie* evidence that the respondent was guilty of such an offence.

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(3) A finding and sentence of a tribunal exercising a professional disciplinary jurisdiction in Bermuda or overseas may be proved by producing a certified copy of the finding and sentence and if so proved, shall constitute evidence of such finding or sentence.

(4) The judgment of any civil court may be proved by producing a certified copy of the judgment as evidence thereof.

Non-appearance of respondent at hearing

16 (1) Where a respondent does not appear in person or is not represented at the time and place appointed for his hearing a disciplinary tribunal may, where it is satisfied that—

- (a) the proper procedure under these Rules has been complied with; and
- (b) the documents required by rule 10 have been served upon him,

nevertheless proceed to hear and determine a charge in his absence.

(2) Where a disciplinary tribunal is satisfied that a charge has been proved against a respondent in his absence and that he was not present throughout the proceedings, it shall attach to its record of the sentence imposed a statement that the finding was made and sentence was passed in the absence of the respondent.

(3) The clerk shall give notice to the respondent in writing of a sentence imposed upon him in accordance with paragraph (2) of this rule.

The finding

17 (1) At the conclusion of the hearing of any complaint, a disciplinary tribunal shall pronounce its finding or sentence, or finding and sentence in respect of any charge.

(2) Such sentence shall be set down in writing and signed by the Chairman and every other member of the tribunal.

(3) In any case where a charge of improper conduct has not been found proved against a respondent at the conclusion of the hearing, no action shall be taken against him and the charge shall be dismissed.

The sentence

18 (1) Where a disciplinary tribunal has found a charge of improper conduct proved against a respondent it shall proceed to sentence him therefor.

(2) A disciplinary tribunal may admit evidence of any previous disciplinary proceedings or court proceedings in which any charge of improper conduct has been proved against a respondent and, after hearing any representations by or on behalf of a respondent, the tribunal shall, subject to paragraph (2A), make a decision as to the sentence to be imposed upon the respondent, and record the sentence in writing.

(2A) Where a charge of improper conduct relates to a breach of—

- (a) the Proceeds of Crime Act 1997 or Regulations made thereunder;
- (b) the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008,

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the disciplinary tribunal shall obtain an opinion from the Board as to the appropriate sentence, and shall give material weight to such opinion.

(3) A disciplinary tribunal may impose any of the following sentences upon a respondent—

- (a) admonition or reprimand;
- (b) disbarment;
- (c) striking off the Roll or removal from the Register of Associates;
- (ca) restriction in every aspect of the practice of the respondent, or part only of the respondent's practice;
- (d) suspension;
- (e) suspension or revocation of a professional company's certificate of revocation; or
- (f) a fine.

(4) The Chairman of a disciplinary tribunal shall pronounce its decision as to sentence to the Committee.

[Rule 18 amended by 2009:29 s.20 effective 19 October 2009; Reg. 18 subsection (2A) inserted by BR 121 / 2018 reg. 3 effective 4 October 2018; Rule 18 amended by 2009:29 s.20 effective 19 October 2009; Rule 18 amended by BR 121 / 2018 rule 3 effective 4 October 2018]

Ambit of sentence of suspension

19 (1) A sentence of suspension may be imposed on a respondent upon such conditions as the tribunal thinks fit, and such conditions may include a requirement that the respondent so sentenced shall undergo such further pupillage or training to attain such standard of competence as the tribunal may determine.

(2) A sentence of suspension may be made to apply to every aspect of the practice of a respondent so sentenced, or to such part only as the disciplinary tribunal may determine.

Orders of disciplinary tribunals

20 (1) A disciplinary tribunal shall make an order setting out the sentence imposed on a respondent.

(2) An order made by a disciplinary tribunal in accordance with paragraph (1) of this rule may make provision for any one or more of the following—

- (a) the disbarment and striking off the Roll of the name of the barrister, or as the case may be, the removal from the Register of Associates of the name of the registered associate, to whom the charge relates;
- (b) the suspension of that barrister or registered associate for a period not exceeding 3 years from practice;

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- (c) the payment by that barrister or registered associate of a fine not exceeding \$5,000 which shall be forfeited to the Crown;
- (d) the repayment by that barrister or registered associate of fees collected from a complainant or the disallowance of such fees where he has not yet collected them;
- (e) the transfer of the administration of trust funds under that barrister's control to an accountant or a bank until other arrangements can be made for their administration where a charge proved against him involves the misuse of trust funds or, as the case may be, the confirmation or revocation of any order made by the Committee under section 18A(1)(e) of the Act;
- (f) the restoration to the Roll of the name of a barrister whose name has been struck off the Roll, or the restoration to the Register of Associates of the name of a registered associate whose name has been removed from the Registered Associates, and to whom a charge relates;
- (g) the admonition or reprimand of that barrister or registered associate, and the issue of the admonishment or reprimand forthwith;
- (h) the provision of advice forthwith to that barrister or registered associate in terms it sees fit;
- (i) in the case of a professional company, by suspending or revoking its certificate of recognition;
- (j) the restriction of the practice areas of the respondent, including restriction on transactions concerning a specified activity.

(3) Any order made by a disciplinary tribunal shall take effect on the day when it is pronounced by the tribunal and from that day may be acted upon and shall be enforceable in the same manner as a judgment or order of a court to the like effect.

[Rule 20 amended by 2009:29 s.20 effective 19 October 2009; Rule 20 paragraph (2) amended by BR 121 / 2018 rule 4 effective 4 October 2018]

Deferment of sentence pending appeal

21 (1) In any case where a respondent has filed a Notice of Appeal against the finding or sentence of a disciplinary tribunal, or both such finding and sentence, the tribunal—

- (a) may rule that the operation of the sentence shall be deferred pending the outcome of his appeal; and if so,
- (b) shall inform the Committee of such ruling.

(2) The Chairman of a tribunal may, on application by the Committee, impose such terms on the deferment or require such undertaking from a respondent in connection therewith as the tribunal may think fit, and this may include an undertaking that he shall not practise law pending the hearing of his appeal and its determination.

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Report of finding and sentence

22 (1) As soon as practicable after the pronouncement of the finding or sentence and order, or where applicable both such finding, and sentence and order, the Chairman of a disciplinary tribunal shall prepare a report in writing of any finding, sentence and order, as the case may be.

(2) At the discretion of the Chairman, the report may also refer to matters which, in light of the evidence given to a disciplinary tribunal, appear to it to require further investigation or comment.

(3) The Chairman of a disciplinary tribunal shall send copies of the report to the following persons—

- (a) the Chief Justice;
- (b) the Registrar;
- (c) the President of the Bar Council;
- (ca) the Board, where the Board is the complainant; and
- (d) a respondent.

[Rule 22 paragraph (3)(ca) inserted by BR 121 / 2018 rule 5 effective 4 October 2018]

Costs

23 (1) Subject to the provisions of this rule, a disciplinary tribunal may make an order under section 19A(1)(d) of the Act, for the payment by any party of costs of such amount and in such terms as it thinks fit.

(2) The cost of remuneration under section 19A(1)(d) of the Act in respect of counsel who presents a case before a disciplinary tribunal shall be borne by the Bar Association, so however that—

- (a) the disciplinary tribunal must inform the Committee of the costs and ask the Committee to authorize such payment; and
- (b) the Committee must obtain the approval of the Bar Council in writing before authorizing such payment.

(3) Where a disciplinary tribunal makes an order for costs, the clerk appointed under section 20 of the Act shall file that order with the Registrar as soon as practicable after it is made.

(4) Where it is proved in disciplinary proceedings before a disciplinary tribunal that a respondent has misused a trust fund or trust funds, the costs incurred by an accountant or a bank which has operated the trust fund or funds in pursuance of an order made under section 18A or 19A of the Act, shall be met on an indemnity basis, by a respondent:

Provided that, where such charge is not made out, those costs shall be met by the Bermuda Bar Association.

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(5) Such charges falling to be paid to an accountant or a bank constitute a civil debt due to the bank or the accountant, as the case may be, and may be recovered by it or him on an indemnity basis.

(6) Upon making an order for costs, a disciplinary tribunal shall either itself determine the amount of such costs or appoint a suitably qualified person to do so on its behalf.

(7) Any costs ordered to be paid by a respondent shall be paid by him to the Bermuda Bar Association who shall make any necessary disbursements.

(8) Subject to the provisions of this rule, the payment of all costs and expenses incurred by a disciplinary tribunal or by the Committee in connection with or in preparation for the hearing before a tribunal shall be borne by the Bermuda Bar Association.

[Amended by:

2009 : 29

BR 121 / 2018]