

1990—No. 757

LEGAL PROFESSION ACT 1987

**LEGAL PROFESSION DISCIPLINARY TRIBUNAL RULES
1990**

NEW SOUTH WALES



[Published in Gazette No. 161 of 7 December 1990]

Citation

1. These Rules may be cited as the Legal Profession Disciplinary Tribunal Rules 1990.

Commencement

2. These Rules commence on 7 December 1990.

Rule-making power

3. (1) These Rules governing the practice and procedure of the Tribunal are made under section 170 of the Act by a rule committee of the Tribunal.

(2) Subject to these Rules and to Part 10 of the Act, the Tribunal may regulate its own practice and procedure.

Definitions

4. (1) In these Rules:

"**Registrar**" means the Registrar of the Tribunal, and includes any person for the time being performing the duties of the Registrar;

"**the Act**" means the Legal Profession Act 1987;

"**Tribunal**" means the Legal Profession Disciplinary Tribunal constituted under Part 10 of the Act.

(2) In these Rules, a reference to a form is a reference to a form in the Schedule to these Rules.

Seal of Tribunal

5. The seal of the Tribunal:

- (a) is to contain the words "Legal Profession Disciplinary Tribunal NSW"; and
- (b) is to be kept in the custody of the Registrar.

Exemption from Rules

6. The Tribunal may, at any time, exempt a person from complying with any of the requirements or procedures set out in these Rules.

Time

7. (1) If no time is fixed by these Rules for the doing of any thing in or in connection with an application made to, or a hearing conducted by, the Tribunal, the Tribunal may, by order, fix the time within which the thing is to be done.

(2) The Tribunal may, by order and on such terms and conditions (if any) as it thinks fit, alter any time fixed by these Rules or by an order of the Tribunal.

Commencement of hearings etc. - forms and service

8. (1) An application to the Tribunal or a hearing by the Tribunal (being an application made, or a hearing into a complaint referred to the Tribunal or made, under the section of the Act referred to in Column 1 of the Table to this Rule) is to be made or commenced by filing with the Registrar a document in or to the effect of the form in Column 2 opposite that section.

(2) The person making such an application or commencing such a hearing is to serve the relevant document on the person or persons (if any) referred to opposite in Column 3.

(3) If it is impracticable for any reason to serve the relevant document, the Tribunal may order that, instead of serving the document, such steps as are specified in the order be taken to bring the document to the notice of the person to be served.

TABLE		
Column 1 (<i>section of Act</i>)	Column 2 (<i>form number</i>)	Column 3 (<i>person to be served</i>)
section 120 (4)	1	the solicitor (if any) and the specified person
section 120 (6)	2	
section 121 (2) (b)	3	
section 134 (1) (c)	4	the complainant and the legal practitioner against whom the complaint has been made
section 135	4	the legal practitioner against whom the complaint has been made
section 141 (1) (c)	4	the complainant, the appropriate Council and the legal practitioner against whom the complaint has been made
section 150 (1)	5	the other parties to the hearing the subject of the review

Address for service

9. The following persons are required, before appearing before the Tribunal, a member of the Tribunal or the Registrar in respect of a hearing into a complaint, to file with the Registrar a notice (in or to the effect of Form 6) of an address for service of documents:

- (a) the legal practitioner against whom the complaint has been made;
- (b) the complainant (if any);
- (c) any person to whom leave is granted by the Tribunal under section 158 (4) of the Act to appear at the hearing.

Party failing to appear at hearing

10. If any person who is entitled to appear at a hearing into a complaint fails to appear at the hearing, the Tribunal may hear and determine the complaint in the absence of the person.

Amendment

11. The Tribunal may, on such terms and conditions (if any) as it thinks fit, order that any document in relation to an application made to the Tribunal or a hearing conducted by the Tribunal into a complaint be amended or that any party have leave to amend any document in relation to an application or a hearing.

Directions

12. The Tribunal may, from time to time, give such directions and make such orders in relation to any application or hearing as appears convenient to the Tribunal (whether or not inconsistent with these Rules) for the just, quick and cheap disposal of the application or hearing.

Settlement of complaints

13. (1) If in relation to a hearing into a complaint, the complainant and the legal practitioner concerned agree to settle the complaint, the complainant or the legal practitioner may file with the Tribunal a notice of the agreement.

(2) The Tribunal may then, if it thinks fit, proceed no further with the hearing into the complaint.

Adjournment

14. The Tribunal may adjourn a hearing on such terms and conditions (if any) as it thinks fit.

Applications for reviews

15. For the purposes of section 150 of the Act, an application to the Tribunal for a review of the Legal Profession Standards Board's determination of a complaint is to be made within 14 days after the date of the Board's determination

Taxation of costs

16. If the Tribunal makes an order for costs under section 120 (5) of the Act, the Tribunal may direct that the costs be taxed before the Registrar on such basis as the Tribunal may direct.

Summons

17. A summons under section 160 of the Act is to be in or to the effect of Form 7.

Notice to attend and to produce documents

18. A notice under section 161 of the Act is to be in or to the effect of Form 8.

Order for filing

19. An order made by the Tribunal for filing with the Prothonotary is to be in or to the effect of Form 9.

Notification of order

20. The Registrar is, after the Tribunal makes an order under section 163 of the Act, required to serve the order and the reasons for it on any party who was not present or represented when the order was made.

Power of members and Registrar

21. (1) The powers of the Tribunal under Rule 12 may be exercised by a member of the Board or by the Registrar

(2) The Registrar may exercise the powers of the Tribunal in respect of any matter referred to the Registrar by the Tribunal.

Referring matter to the Tribunal

22. A member of the Tribunal or the Registrar may refer any matter in relation to a hearing to the Tribunal.

Review

23. The Tribunal may review any direction or other thing given or done by a member of the Tribunal or by the Registrar and make such other direction or order as it thinks fit.

Registrar of the Tribunal.

These Rules were made by the Legal Profession Disciplinary Tribunal on 9 August 1990.

SCHEDULE—FORMS**FORM 1**

(Rule 8)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

APPLICATION FOR ORDER UNDER S.120 (4)

The Law Society of New South Wales applies to the Legal Profession Disciplinary Tribunal for an order prohibiting any solicitor from employing or paying (*name of person*) in connection with the solicitor's practice.

The Law Society is of the opinion that (*state the opinion in terms of s.120 (2) (a) or (b) of the Legal Profession Act 1987*).

This application will be listed for mention before the Registrar/for hearing by the Tribunal * at (*address*) at (*time*) on (*date*).

Date:

Applicant (Law Society)

(** Delete whichever is inapplicable*)

FORM 2

(Rule 8)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

**APPLICATION UNDER S.120 (6) FOR REVOCATION OF
ORDER**

(The Law Society of New South Wales/name of person against whom the order was made)* applies to the Legal Profession Disciplinary Tribunal for an order that the order (other than for costs) made on *(date)* by the Tribunal under section 120 of the Legal Profession Act 1987 be revoked.

This application will be listed for mention before the Registrar/for hearing by the Tribunal * at *(address)* at *(time)* on *(date)*.

Date:

Applicant (Law Society/name of person)*

*(*Delete whichever is inapplicable)*

FORM 3

(Rule 8)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

APPLICATION FOR LEAVE UNDER S. 121

The applicant applies to the Legal Profession Disciplinary Tribunal under section 121 of the Legal Profession Act 1987 for leave to be employed and to be paid in connection with the practice of *(name of solicitor)*.

This application will be listed for mention before the Registrar/for hearing by the Tribunal * at *(address)* at *(time)* on *(date)*.

Date:

Applicant

Applicant's address for service:

(Delete whichever is inapplicable)*

FORM 4

(Rule 8)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

COMPLAINT

The *(appropriate Council/Attorney General* complains/refers a complaint*)* to the Legal Profession Disciplinary Tribunal against *(name of legal practitioner against whom the complaint has been made)*.

If the complaint is referred to the Tribunal under s. 134 (1) (c) or s. 141 (1) (c) of the Legal Profession Act 1987, annex (a copy of the complaint together with the particulars as provided by the complainant. If the complaint is made under s. 135 of that Act, give the particulars of the complaint below:

If the complainant requests the making of orders under s. 130 (3) of that Act, set out the orders requested.

The *(appropriate Council/Attorney General*)* requests the making of the following orders:

This complaint will be listed for mention before the Registrar/for hearing by the Tribunal * *(address)* at *(time)* on *(date)*.

To *(name of legal practitioner against whom the complaint has been made)*:

Before any attendance at that time, you must file a notice of address for service of any documents on you.

Orders may be made against you in your absence.

Date:

(Appropriate Council/Attorney General*)

*(*Delete whichever is inapplicable)*

FORM 5

(Rule 8)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

APPLICATION FOR REVIEW OF BOARD'S DECISION

(Name of party to the hearing conducted by the Legal Profession Standards Board) applies to the Legal Profession Disciplinary Tribunal under section 150 of the Legal Profession Act 1987 for a review of the determination made by the Legal Profession Standards Board on *(date)* of a complaint against *(name of legal practitioner against whom complaint has been made)*.

This application will be listed for mention before the Registrar/for hearing by the Tribunal * at *(address)* at *(time)* on *(date)*.

Date:

(Applicant)

(Delete whichever is inapplicable)*

FORM 6

(Rule 9)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

NOTICE OF ADDRESS FOR SERVICE

The address for service of documents on *(name of legal practitioner, complainant or party having leave to appear under s. 158 (4) of the Legal Profession Act 1987)* is *(address)*.

(Name of person giving notice of address for service)

FORM 7

(Rule 17)

Legal Profession Disciplinary Tribunal
(Hearing and number)

SUMMONS

To: *(name and address)*

You are required to appear before a hearing to be conducted by the Legal Profession Disciplinary Tribunal on *(date)* at *(time)* at *(address)* to give evidence (or to give evidence and/or to produce the documents specified below):

This summons is served under section 160 of the Legal Profession Act 1987 which provides:

(4) A person served with a summons to appear at a hearing to give evidence shall not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from the day to day unless excused, or released from further attendance, by a member of the Tribunal.

Penalty: \$2,000.

Date:

(signature)

*Member or Registrar of the Legal
Profession Disciplinary Tribunal*

FORM 8

(Rule 18)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

NOTICE TO ATTEND AND PRODUCE DOCUMENTS

To: *(name and address)*

You are required to attend before *(name of member of the Legal Profession Disciplinary Tribunal or the Registrar of the Tribunal or name or description of person authorised by the Tribunal)* on *(date)* at *(time)* at *(address)* and to produce at that time and place the documents specified below:

This notice is served under section 161 of the Legal Profession Act 1987 which provides:

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Penalty: \$2,000.

Date:

(signature)

*Member or Registrar of the Legal
Profession Disciplinary Tribunal*

FORM 9

(Rule 19)

*Legal Profession Disciplinary Tribunal
(Hearing and number)*

ORDER TO BE FILED WITH THE PROTHONOTARY

The Legal Profession Disciplinary Tribunal makes the following orders:

Date of order:

(signature and seal)

*President of the
Legal Profession
Disciplinary Tribunal*

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SCHEDULE—FORMS

EXPLANATORY NOTE

The object of these Rules is to prescribe matters relating to the practice and procedure of the Legal Profession Disciplinary Tribunal. The Tribunal conducts hearings into complaints referred to it or made by the Bar Council or the Law Society Council against legal practitioners concerning questions of professional misconduct. The Tribunal also sits to make orders in relation to the control of employment of clerks by solicitors. These Rules are made by a rule committee of the Tribunal.
