

No. S 92

**LEGAL PROFESSION (LAW SOCIETY OF BRUNEI DARUSSALAM) ORDER
(Chapter 132, O1)**

LEGAL PROFESSION (DISCIPLINARY COMMITTEE PROCEEDINGS) RULES, 2010

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LEGAL PROFESSION (LAW SOCIETY OF BRUNEI DARUSSALAM) ORDER
(Chapter 132, O1)

LEGAL PROFESSION (DISCIPLINARY COMMITTEE PROCEEDINGS) RULES, 2010

In exercise of the power conferred by paragraphs 46(14) and 55(1) of the Legal Profession (Law Society of Brunei Darussalam) Order, 2003, the Rules Committee appointed by the Council, with the approval of Chief Justice, hereby makes the following Rules —

Citation and commencement.

1. These Rules may be cited as the Legal Profession (Disciplinary Committee Proceedings) Rules, 2010 and shall commence on a date to be appointed by the Chief Justice by notification in the *Gazette*.

Interpretation.

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

"advocate and solicitor" has the same meaning as in section 2 of the Legal Profession Act (Chapter 132);

"chairman" means the chairman of a Disciplinary Committee appointed by the Chief Justice under paragraph 54(1)(a) of the Order;

"complainant" means a person —

(a) who has made a complaint to the Society under paragraph 49(1) of the Order; or

(b) who has made an application under paragraph 46(5) of the Order for leave for an investigation to be made into a complaint against a legal officer or a non-practising advocate and solicitor;

"complaint" means a complaint of the conduct of a legal officer or an advocate and solicitor and includes any information touching upon the conduct of an advocate and solicitor that may be referred by a Judge of the Supreme Court, the Attorney-General or the Council under paragraphs 49(2) or (3), as the case may be, of the Order;

"law practice" means a firm of advocates and solicitors and includes a sole-proprietorship and partnership of 2 or more advocates and solicitors;

"non-practising advocate and solicitor" means an advocate and solicitor who does not, at the time of the misconduct of which he is alleged to be guilty, have in force a practising certificate;

"party" means a party to the Disciplinary Committee proceedings;

"respondent" means the legal officer or advocate and solicitor in respect of whom a Disciplinary Committee has been appointed to hear and investigate a matter;

"Secretariat" means the office of the Chief Registrar to provide administrative support to a Disciplinary Committee;

"secretary" means the secretary of a Disciplinary Committee appointed under paragraph 54(4) of the Order.

Disciplinary Committee proceedings by Society.

3. (1) Where the Council applies to the Chief Justice under paragraph 53(1) of the Order to appoint a Disciplinary Committee to hear and investigate a matter against an advocate and solicitor, the Society shall, within 3 weeks after the date the Council makes the application —

- (a) inform the Secretariat of the application to the Chief Justice; and
- (b) provide the Secretariat with the following information —
 - (i) the full name of the advocate and solicitor concerned;
 - (ii) the name of the law practice with which the advocate and solicitor concerned practises or last practised in Brunei Darussalam;
 - (iii) the principal and any other address at which the advocate and solicitor concerned practises or last practised in Brunei Darussalam;
 - (iv) the telephone and facsimile numbers of the office at which the advocate and solicitor concerned practises or last practised in Brunei Darussalam;
 - (v) the charge against the advocate and solicitor concerned;
 - (vi) the name and contact particulars of the advocate and solicitor appointed to represent the Society before the Disciplinary Committee;
 - (vii) the names of the members of the Inquiry Committee to which the matter against the advocate and solicitor concerned had been referred.

(2) The advocate and solicitor appointed to represent the Society before the Disciplinary Committee shall, within 6 weeks after the date the Council makes the application, furnish the Secretariat with 8 copies of each of the following documents –

(a) the complaint against the advocate and solicitor concerned;

(b) the statement of the case in the form set out as Form 1 in the Schedule, specifying the charges and allegations that the advocate and solicitor concerned is required to answer.

Disciplinary Committee proceedings by complainant.

4. (1) Where, on an application by a complainant under paragraph 61(1) of the Order, a Judge of the Supreme Court makes an order under paragraph 61(4)(b) of the Order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee, the Society shall, within 3 weeks after the date it makes the application to the Chief Justice –

(a) inform the Secretariat of the application to the Chief Justice; and

(b) provide the Secretariat with the following information –

- (i) the full name of the advocate and solicitor concerned;
- (ii) the name of the law practice with which the advocate and solicitor concerned practises or last practised in Brunei Darussalam;
- (iii) the principal and any other address at which the advocate and solicitor concerned practises or last practised in Brunei Darussalam;
- (iv) the telephone and facsimile numbers of the office at which the advocate and solicitor concerned practises or last practised in Brunei Darussalam;
- (v) a copy of the complaint originally made to the Society against the advocate and solicitor concerned;
- (vi) the name and contact particulars of the complainant and the complainant's advocate and solicitor, if any;
- (vii) the names of the members of the Inquiry Committee to which the matter against the advocate and solicitor concerned had been referred.

(2) The complainant shall, within 6 weeks after the date the Judge makes an order under paragraph 61(4)(b) of the Order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee —

(a) provide the Secretariat with the name and contact particulars of his advocate and solicitor and an address for the service of documents; and

(b) furnish the Secretariat with 8 copies of each of the following documents —

- (i) the complaint against the advocate and solicitor concerned;
- (ii) the statement of the case in the form set out as Form 1 in the Schedule, specifying the charges and allegations that the advocate and solicitor concerned is required to answer.

Disciplinary Committee proceedings against legal officers and non-practising advocates and solicitors.

5. Where, on an application by a complainant under paragraph 46(5) of the Order for leave for an investigation to be made into a complaint against a legal officer or a non-practising advocate and solicitor, the Chief Justice grants such leave and appoints a Disciplinary Committee, the complainant shall —

(a) within 3 weeks after such leave is granted, provide the Secretariat with the following information of the legal officer or advocate and solicitor concerned —

- (i) the full name;
- (ii) the name of the organisation at which he works;
- (iii) the job title or designation in the organisation at which he works;
- (iv) the principal and any other address at which he works;
- (v) the telephone and facsimile numbers of the office at which he works;

(b) within 6 weeks after such leave is granted, provide the Secretariat with the name and contact particulars of his advocate and solicitor and an address for the service of documents, and furnish the Secretariat with 8 copies of each of the following documents —

- (i) the complaint against the legal officer or advocate and solicitor concerned;

- (ii) the statement of the case in the form set out as Form 2 in the Schedule, specifying the charges and allegations that the legal officer or advocate and solicitor concerned is required to answer.

Documents to be forwarded by secretary.

6. Within 2 weeks after the appointment of a Disciplinary Committee, the secretary shall —

(a) forward to every member of the Disciplinary Committee and to the respondent a copy each of —

- (i) the notice in form set out as Form 3 in the Schedule;
- (ii) the complaint against the respondent; and
- (iii) the statement of the case specifying the charges and allegations the respondent is required to answer; and

(b) forward to the advocate and solicitor for the Society or the complainant, as the case may be, a copy of the notice in the form set out as Form 3 in the Schedule.

Representation.

7. (1) The respondent may appear before the Disciplinary Committee either in person or by an advocate and solicitor.

(2) Where the Disciplinary Committee proceedings are commenced pursuant to an application by a complainant under paragraphs 46(5) or 61(1) of the Order, the complainant shall employ an advocate and solicitor and be represented by him in the conduct of proceedings before the Disciplinary Committee.

Defence.

8. The respondent shall, within 14 working days after the date the notice in the form set out as Form 3 in the Schedule is served on him, furnish —

- (a)* the secretary with 7 copies of his defence; and
- (b)* every other party with one copy of his defence.

Discovery.

9. (1) Each party shall, within 14 days after the defence has been furnished to the secretary pursuant to rule 8, furnish —

(a) the secretary with 7 copies of the list of the documents on which he intends to rely; and

(b) every other party with one copy of the list of the documents on which he intends to rely.

(2) Any party may inspect the documents included in the list furnished by any other party within 14 days after the date the list is furnished.

(3) A copy of any document mentioned in the list furnished by any party shall, on application by the party requiring it be furnished to that party by the other within 3 working days after receipt of such application.

Evidence.

10. (1) At a Disciplinary Committee hearing, the evidence in chief of a witness shall be given by way of affidavit.

(2) Unless the Disciplinary Committee otherwise orders or the parties otherwise agree, the witness shall attend the Disciplinary Committee hearing for cross-examination.

(3) Where a witness does not attend the Disciplinary Committee hearing for cross-examination, his affidavit shall not be received in evidence unless —

(a) the Disciplinary Committee gives leave for his affidavit to be received in evidence; or

(b) his attendance at the hearing has been dispensed with by order of the Disciplinary Committee or by agreement between the parties.

(4) Unless the Disciplinary Committee otherwise orders, the evidence in chief of all witnesses shall be limited to one affidavit for each witness.

(5) Every party shall, within 10 weeks after the date of the notice in the form set out as Form 3 in the Schedule, furnish —

(a) the secretary with —

(i) 7 copies of each of the affidavits of evidence in chief of his witnesses;

(ii) 7 copies of the bundle of documents on which he intends to rely or refer to in the course of the Disciplinary Committee hearing; and

- (iii) 7 copies of the bundle of authorities on which he intends to rely or refer to in the course of the Disciplinary Committee hearing; and
- (b) every other party with —
- (i) one copy of each of the affidavits of evidence in chief referred to in sub-rule (5)(a)(i);
 - (ii) one copy of the bundle of documents referred to in sub-rule (5)(a)(ii); and
 - (iii) one copy of the bundle of authorities referred to in sub-rule (5)(a)(iii).

Subpoenas.

11. An application for a writ of subpoena under paragraph 55(2)(b) of the Order shall be made to the Registrar of the Supreme Court in accordance with Order 38, rule 14 of the Rules of the Supreme Court (Chapter 5, R1).

Disciplinary Committee or chairman may give directions by letter.

12. (1) The Disciplinary Committee or the chairman may give the parties directions for the conduct of the matter by way of a letter served in accordance with rule 19.

(2) A letter containing the directions of the Disciplinary Committee or the chairman may be signed by the secretary or, in his absence, any member of the Disciplinary Committee who is not a lay person.

Pre-hearing conferences.

13. The Disciplinary Committee may, of its own motion or on the application of any party, direct the parties to attend a pre-hearing conference in order that it may make such orders or give such directions as it thinks fit for the just, expeditious and economical disposal of the matter.

Convening of Disciplinary Committee hearing.

14. (1) Unless the Disciplinary Committee or the chairman otherwise orders, the Disciplinary Committee hearing shall be convened within 4 months after the date the Disciplinary Committee is appointed.

(2) The secretary shall notify the parties of the date or dates fixed for the Disciplinary Committee hearing by serving a notice of the hearing in the form set out as Form 4 in the Schedule.

Disciplinary Committee to hear applications in camera.

15. (1) The Disciplinary Committee shall hear all matters in camera and shall, on completion of the proceedings, record its findings and opinion in the form of a report under paragraphs 46(7) or 57(4), as the case may be, of the Order.

(2) The Disciplinary Committee may permit any person whom it considers, in its discretion, to be an interested party to be present in person or by his advocate and solicitor.

Failure to appear.

16. If the respondent fails to appear at the Disciplinary Committee hearing, the Disciplinary Committee may, upon proof of service on the respondent of the notice of the hearing in the form set out as Form 4 in the Schedule, proceed to hear and determine the Disciplinary Committee proceedings in his absence.

Adjournments.

17. The Disciplinary Committee may, of its own motion or on the application of any party, adjourn the Disciplinary Committee hearing as the Disciplinary Committee thinks fit.

Amendments or additions to statement of case.

18. (1) If it appears to the Disciplinary Committee that the allegations in a statement of the case should be amended or added to, the Disciplinary Committee may permit the amendment of or addition to the statement of the case.

(2) If the amendment or addition is allowed at the Disciplinary Committee hearing, and the amendment or addition is such as to take any party by surprise or prejudice the conduct of his case, the Disciplinary Committee shall grant an adjournment of the Disciplinary Committee hearing as it thinks fit.

(3) If the Disciplinary Committee permits the amendment of or addition to the statement of the case, the Disciplinary Committee shall also permit the respondent to amend his defence.

Service of letters, notices and documents.

19. (1) Service of any letter, notice or document on the respondent may be effected by —

(a) serving the letter, notice or document personally on the respondent;
or

(b) serving the letter, notice or document on the respondent's advocate and solicitor, if any.

{2} If the service under sub-rule (1)(a) is impracticable and the respondent is not represented by any advocate and solicitor, the service of any letter, notice or document on the respondent may be effected by leaving the letter, notice or document in an envelope addressed to the respondent –

(a) where the respondent is a legal officer or non-practising advocate and solicitor, at the principal address at which he works or, if available, his Brunei Darussalam residential address;

(b) where the respondent is an advocate and solicitor who has ceased to practise, at the principal address at which he last practised in Brunei Darussalam or, if available, his Brunei Darussalam residential address; or

(c) where the respondent is an advocate and solicitor who is still practising, at the principal address at which he practices in Brunei Darussalam.

{3} When the secretary or the Secretariat serves any letter, notice or document on the respondent in accordance with sub-rule {2}, such service shall be deemed to be effected on the date the letter, notice or document is left at the address concerned.

{4} Where the Disciplinary Committee proceedings are commenced pursuant to an application by a complainant under paragraphs 46(5) or 61(1) of the Order, service of any letter, notice or document on the complainant may be effected by –

(a) leaving the letter, notice or document in an envelope addressed to the complainant at any address provided by the complainant for the service of documents;

(b) sending the letter, notice or document by registered or courier to the complainant at any address provided by the complainant for the service of documents; or

(c) serving the letter, notice or document on the complainant's advocate and solicitor.

{5} Where the Disciplinary Committee, on the application or instigation of any party, orders or directs the secretary or the Secretariat to serve a letter, notice or document in a manner that is not prescribed in this rule, that party shall bear the expenses incurred or to be incurred in effecting service in the manner ordered or directed by the Disciplinary Committee.

Failure to comply with directions or orders.

20. If any party fails to comply with —

(a) any direction contained in these Rules; or

(b) any order made or direction given by the Disciplinary Committee or the chairman,

the Disciplinary Committee may, in its discretion, draw such inferences from the failure as it considers appropriate.

Disciplinary Committee may dispense with certain matters.

21. The Disciplinary Committee may dispense with any requirement of these Rules relating to letters, notices, documents, service or time, in any case where it appears to the Disciplinary Committee to be just to do so.

Extension of time.

22. The Disciplinary Committee may extend the period for doing anything under these Rules, notwithstanding that the application for extension is not made until after the expiration of that period.

Application of Chapter 108.

23. (1) The Evidence Act shall apply to proceedings before the Disciplinary Committee in the same manner as it applies to civil and criminal proceedings.

(2) The Disciplinary Committee may, in its discretion, accept as conclusive a finding of fact of a court of competent jurisdiction in Brunei Darussalam to which proceedings the respondent was a party.

Costs.

24. (1) The Disciplinary Committee shall have no power to award costs to or against a legal officer or non-practising advocate and solicitor in any Disciplinary Committee proceedings commenced against that legal officer or non-practising advocate and solicitor.

(2) Except as provided in paragraph 57(2) of the Order, the Disciplinary Committee shall have no power to award costs to or against an advocate and solicitor in any Disciplinary Committee proceedings commenced against that advocate and solicitor.

Procedure.

25. Subject to these Rules, the Disciplinary Committee shall have power to regulate its own proceedings and, in doing so, the Disciplinary Committee shall have regard to the practice and procedure of the courts.

Transitional provisions.

26. Where an application has been made by the Law Society to the Chief Justice for the appointment of a Disciplinary Committee pursuant to paragraph 53 of the Order prior to the commencement of these Rules, the time periods provided for under rules 3, 4 and 5 of these Rules shall be one month from the date of commencement instead of from the date the Council makes the application to the Chief Justice.

SCHEDULE

FORM 1 (rules 3(2)(b) and 4(2)(b)(ii))

**IN THE MATTER OF _____, A LEGAL OFFICER* OR *
AN ADVOCATE AND SOLICITOR**

AND

**IN THE MATTER OF THE LEGAL PROFESSION (LAW SOCIETY OF
BRUNEI DARUSSALAM) ORDER (Chapter 132, O1)**

STATEMENT OF THE CASE

1. _____ of [state address], am an advocate and solicitor of the Supreme Court of Brunei Darussalam of _____ years standing.
2. [State the facts concisely in numbered paragraphs as in a statement of claim in civil proceedings].

Dated this _____ day of _____ 20 .

.....
(Signature)
*Advocate and solicitor representing the
Brunei Darussalam Law Society/Complainant*

IN THE MATTER OF _____, A LEGAL OFFICER* OR *
AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION (LAW SOCIETY OF
BRUNEI DARUSSALAM) ORDER (Chapter 132, O1)

STATEMENT OF THE CASE

1. _____ of [state address], am an advocate and solicitor of the
Supreme Court of Brunei Darussalam of _____ years standing.
2. [State the facts concisely in numbered paragraphs as in a statement of claim in
civil proceedings].

Dated this _____ day of _____ 20 ____ .

.....
(Signature)
*Advocate and solicitor representing
the complainant*

FORM 3 (rules 6(a)(i), 8, 6(b) and 10 (5))

IN THE MATTER OF _____, A LEGAL OFFICER* OR *
AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION (LAW SOCIETY OF
BRUNEI DARUSSALAM) ORDER (Chapter 132, O1)

NOTICE OF DISCIPLINARY COMMITTEE PROCEEDINGS

Notice is hereby given that Disciplinary Committee proceedings have been commenced against _____, a [legal officer] * [advocate and solicitor] of the Supreme Court of Brunei Darussalam*, who is required to answer the allegations contained in the complaint and the statement of the case that accompany this notice.

Dated this _____ day of _____ 20 .

.....
(Signature)
Secretary of the Disciplinary Committee

* Delete as appropriate.

FORM 4

(rules 14 (2) and 16)

IN THE MATTER OF _____, A LEGAL OFFICER* OR *
AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION (LAW SOCIETY OF
BRUNEI DARUSSALAM) ORDER (Chapter 132, O1)

NOTICE OF DISCIPLINARY COMMITTEE HEARING

Notice is hereby given that the Disciplinary Committee proceedings against _____, have been fixed for hearing on/from* _____ to _____. The Disciplinary Committee will sit at _____ and the hearing will begin on _____ at _____ am/pm.*

Dated this _____ day of _____ 20 _____.

.....
(Signature)
Secretary of the Disciplinary Committee

* Delete as appropriate.

Made this 25th. day of Syawal, 1431 Hijriah corresponding to the 9th. day of October, 2010.

PENGIRAN IZAD RYAN BIN PENGIRAN LAILA KANUN DIRAJA
PENGIRAN HAJI BAHRIN
for Members of the Rules Committee.