

Guide for Establishing and Maintaining Complaints and Discipline Procedures

1. A Code of Conduct, based on IBA principles should be devised. This is a fundamental statement of the principles against which a lawyer's conduct will be considered in the context of a complaint. Before the conduct complained of can lead to disciplinary consequences, it must amount to a breach of the adopted rules as set out in the Code of Conduct.
2. Legal services consumers should be made aware of the existence of the Code of Conduct, the process for making complaints against lawyers and the disciplinary procedures that may follow a substantiated complaint.
3. Information about the procedures by which complaints are handled should be publicly available or easily accessible. The information must clearly identify where, how and to whom complaints are to be directed ("Complaint Handling Body"). The information must also specify the period of time after the conduct within which complaints must be made.
4. Any person or entity is entitled to raise a complaint at no cost.
5. The Complaint Handling Body is to provide a complainant with acknowledgement of receipt of the complaint as well as an outline of the process by which the complaint is to be handled.
6. If the Complaint Handling Body accepts a complaint orally it must cause the substance of the complaint to be reduced to a written document.
7. The lawyer is to receive a copy of the written complaint document as soon as practicable.
8. The lawyer must be given a reasonable opportunity and time to respond to the complaint. The lawyer should be made aware of the lawyer's positive obligation to respond and that a failure to respond in a timely and appropriate manner can give rise to disciplinary consequences.
9. The Complaint Handling Body should be fair, impartial and independent. The Complaint Handling Body is to investigate the complaint in a timely manner and report its findings to the appropriate regulatory body.
10. If the Complaint Handling Body determines the complaint to be of a less serious nature, it may liaise between the lawyer and complainant with a view to resolving or mediating the complaint. If the Complaint Handling Body considers the complaint to be appropriately dealt with or mediated, it need not escalate the complaint to a hearing before the Tribunal.

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11. The Complaint Handling Body may also dismiss a complaint if the complaint is misconceived (for example, it does not relate to conduct which breaches the Code of Conduct) or if insufficient information is provided about the conduct complained of.
12. In the circumstances described in paragraph 9 and 10 above, the Complaint Handling Body must notify both the complainant and the lawyer of its decision and make a report to the Disciplinary Tribunal. Either the complainant or the lawyer can appeal against the Complaint Handling Body's decision to the Disciplinary Tribunal.
13. A special Disciplinary Tribunal is to be established for the hearing of serious complaints about lawyers. The Tribunal is to be fair, impartial and independent. The Tribunal should comprise three persons. It is recommended that a non-lawyer be represented on the Tribunal to ensure objectivity in the handling of complaints against lawyers.
14. If the Complaint Handling Body determines the conduct complained of to be of a serious nature, it must refer the matter to the Disciplinary Tribunal.
15. The Disciplinary Tribunal will be provided with copies of the complaint document, the lawyer's response and the Complaint Handling Body's investigation report. However in deciding the matter, the Disciplinary Tribunal may consider other materials it considers relevant.
16. The Disciplinary Tribunal will provide all parties with the reasons for its decisions.
17. The lawyer, complainant and the Complaint Handling Body each have a right to appear at the hearing before the Disciplinary Tribunal. The lawyer, complainant and the Complaint Handling Body also have a right to appeal against the decisions of the Disciplinary Tribunal.
18. The Appeal Court must be fair, impartial and independent in determining appeals against decisions of the Disciplinary Tribunal. The Court retains jurisdiction to review disciplinary decisions.
19. The Disciplinary Tribunal must have a range of sanctions available so that it can impose a suitable discipline including the power to:
 - dismiss or uphold the complaint;
 - reprimand the lawyer;
 - fine and/or order the lawyer to pay compensation;
 - suspend or revoke the lawyer's license to practice;
 - require the lawyer to undertake further a course of education;
 - require the lawyer to apologize to the complainant; or
 - impose restrictions on the lawyer's license to practice.
20. Disciplinary Tribunal hearings should be open to the public except if the Disciplinary Tribunal directs otherwise in the public interest because of the subject matter or the nature of evidence.

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21. The decisions of the Disciplinary Tribunal and/or Complaints Handling Body should be made available to the public.

NOTE TO DRAFT (for further discussion):

We received numerous comments on the February 17, 2007 draft of the Guide. Many of those comments were incorporated in the current version above, or were determined to be already contained in the draft. The following are some comments and suggestions which were not yet incorporated.

- i. Identify authority that has responsibility for creation and oversight over the disciplinary system (ABA)
- ii. Recommendations relating to appointment of disciplinary counsel, members of Complaints Handling Body, or Disciplinary Tribunal (ABA)
- iii. Identify "Appeal Court" and provide details about it. (ABA)
- iv. Suggest funding mechanism (ABA)
- v. Identify nature of disciplinary proceedings (ABA)
- vi. Immunity for complainants from civil actions for making complaint (ABA)
- vii. Procedure for hearing (discovery etc.) ABA
- viii. Recommendation that there be consensual discipline (ABA)
- ix. Procedures for interim suspension (ABA)
- x. Recommendation that the complainant cannot appeal the Disciplinary Tribunal decision (ABA)
- xi. Recommendation against ordering a lawyer to pay compensation (ABA, CCBE)
- xii. Recommendation that Tribunal and Appeal Court consider relevant aggravating and mitigating factors in determining appropriate sanction. (ABA)
- xiii. Recommendation against having hearings before Disciplinary Tribunal open to public (Jeyaretnam)
- xiv. Problematic issues of non-lawyers on Tribunal, and public hearings, for EU countries (CCBE)

Complaints Procedures Working Group

Bar Issues Commission

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