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Guide for Establishing and Maintaining Complaints and Discipline Procedures

Approved by the IBA Council October 2007

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This guide is the work of the Bar Issues Commission's Complaints Procedures Working Group. It was prepared as a result of several meetings with developing bar leaders who expressed a need for a basic complaints and discipline procedure that they could adopt or adapt (in the absence of none or a defective process) for their own bar. It is intended as a model only.

1. An enforceable local code of conduct, based on IBA principles should be devised ("Code of Conduct"). 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 and 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 who is the subject of the complaint 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 to the complainant, the lawyer, and to the appropriate 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 Disciplinary Tribunal, as described below.
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. The Complaint Handling Body must notify both the complainant and the lawyer of its decision to either dismiss the complaint or to refer the matter to the Disciplinary Tribunal. The complainant can appeal against the Complaint Handling Body's dismissal to the Disciplinary Tribunal.
13. If the Complaint Handling Body does not dismiss the complaint, it must refer the matter to the Disciplinary Tribunal.
14. At any time, a lawyer may admit to the misconduct and if compatible with the legal system of the jurisdiction,¹ agree to the appropriate sanction which must be approved by the Disciplinary Tribunal.
15. A Disciplinary Tribunal and an Appeal Tribunal are to be established for the hearing of complaints about lawyers referred by the Complaint Handling Body. The Disciplinary Tribunal and the Appeal Tribunal are to be fair, impartial and independent. Typically, such Tribunals should comprise three persons, and may, but need not necessarily, contain a non-lawyer.
16. The Disciplinary Tribunal will be provided with the file relevant to the complaint. However in deciding the matter, the Disciplinary Tribunal may consider other materials it considers relevant.
17. The Disciplinary Tribunal must issue its reasoned decisions to the complainant and to the lawyer.
18. The Disciplinary Tribunal and the Appeal Tribunal shall observe due process of law. The procedures adopted by each Tribunal should give appropriate recognition to client confidentiality. The lawyer and the complainant (or a body legally obliged to act in the public's interest)² each have a right to appeal against the decisions of the Disciplinary Tribunal, to the Appeal Tribunal.

19. The Disciplinary Tribunal and the Appeal Tribunal must have a range of sanctions available so that it can impose a suitable penalty including the power to:
- dismiss or uphold the complaint;
 - reprimand the lawyer;
 - fine and/or order the lawyer to pay restitution of money paid as fees, if the latter is compatible with the legal system of the jurisdiction;
 - suspend or revoke the lawyer's license to practice;
 - require the lawyer to undertake further a course of education; or
 - impose restrictions on the lawyer's license to practice.
20. Any decision of the Disciplinary Tribunal or Appeal Tribunal that imposes a penalty against a lawyer should be made available to the public, subject to ensuring protection of client confidentiality.

Endnotes:

1 Re s. 14: This does not work in jurisdictions which do not permit plea bargaining.

2 Re s. 18: In some jurisdictions, unlike criminal courts, there is no right of appeal on the part of the claimant, but there are normally other bodies who may appeal (e.g. in Austria and the United States, the disciplinary prosecutor or the Complaint Handling Body). The ABA has expressed reservations about the complainant being viewed as a party in interest at this stage in the proceeding.

*Complaints Procedures Working Group
Bar Issues Commission*